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ABSTRACT

Responding to the needs of children, particularly juvenile offenders, requires both good judgment and good information. Knowledge and awareness of a child's background and problems gives teachers, counselors, administrators, police, and other legal professionals guidance in developing proper education, programs, and counsel for the child. Confidential information should be shared on a routine, ongoing basis when specific needs warrant such sharing. Currently our juvenile justice system protects the privacy of the youthful offender convicted of serious crime to such an extent that the rest of society often is left at risk. In the first of two sections, this document outlines eight steps for the development of information management policies and interagency cooperation; included among these steps are: (1) determining what information is maintained by each member of the interagency partnership; (2) designating an "information management liaison" at each agency; and (3) periodically reviewing the effectiveness and appropriateness of the policies established. The second portion of this document generally examines each state's juvenile records statutes. Appended is a guide for the use of state statute tables, a model of a juvenile records code, a model of Family Education Rights and Privacy Act of 1974 legislation, and a collection of sample forms. (101 references) (KM)

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THE NEED TO KNOW

JUVENILE RECORD SHARING

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NATIONAL SCHOOL SAFETY CENTER
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THE NEED TO KNOW:
Juvenile Record Sharing

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Introduction

The judgments we make are no better than the adequacy and quality of the information we have. Responding to the needs of children, particularly juvenile offenders, requires not only good judgment but also good information.

Knowledge and awareness of a child's background and problems gives teachers, counselors, administrators, police, probation officers, prosecutors, the courts and other professionals guidance in developing proper education, training, programs and counsel for the child. Confidential information should be shared on a routine, ongoing basis when specific needs warrant such sharing.

People who work with at-risk juveniles often simply do not have the data they need to operate effectively. The dilemma comes in determining what information is confidential and what should be disclosed to protect others and to hold juvenile offenders accountable. The practice of keeping juvenile records confidential, which is intended primarily to respond to individual privacy and other rights, has not kept pace with the vast changes in the juvenile justice system and the rapid expansion of serious juvenile crime. Too often, juvenile agencies are unaware that they are each attempting to serve the same at-risk youths. When information is shared appropriately, improved strategies for rehabilitating, educating and better serving those youths — and for improving public safety — can be developed.

A number of constraints currently hinder collaborative information sharing. This book addresses these issues and provides some impetus for federal, state and local officials to review existing legislation and policies and to consider new approaches which allow those public agencies that deal with juvenile offenders easier access to their records. Ironically, no court cases have emerged nationally charging the inappropriate sharing of juvenile records under the Family Educational Rights and Privacy Act (FERPA).

Our juvenile justice system protects the privacy of the serious youthful offender to such an extent that the rest of society often is left at risk. This clearly is inappropriate. When a juvenile has been actively involved in criminal behavior, all agencies working with the offender have a right to know.

Approximately 650,000 law enforcement officers work in the United States today. Half of these are patrol officers, who spend about 50 percent of their time dealing with juveniles. Much of that time is spent with repeat offenders, who commit a disproportionately large percentage of crime. Being able to share information about this crime-prone juvenile will allow juvenile justice officials to apprehend, prosecute, control and, hopefully, rehabilitate the

juvenile criminal. At a minimum, it may prevent other serious crimes and significantly enhance public safety, a goal at least equally as important as rehabilitation. Appropriate information sharing and interagency cooperation are critical to this effort.

This nation's confidentiality laws often are interpreted in ways that impede the ability of law enforcers and other youth-serving professionals to protect, locate and return missing and exploited children. The need for national information-sharing networks on a legitimate need-to-know basis is critical in helping these children who are victims or are at risk of becoming victims.

If an individual wishes to be protected under the law, then that individual must first act within the law. When a juvenile chooses a lifestyle of crime and violence, that individual should not expect to have these activities shielded from disclosure to others. Appropriate information about such persons should be encouraged. Federal and state laws should provide the procedures and flexibility to grant youth-serving agencies the capabilities they need for sharing information. Such interagency collaboration promotes safety and enhances everyone's ability to deal with juvenile crime and violence.

Ronald D. Stephens
Executive Director
National School Safety Center

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Part I

Juvenile Record Sharing and Confidentiality

Teachers, parents, counselors, administrators, police, probation and parole officers, and the courts all too often exclaim: "If only we knew!"[1]

Chris
Chris attends junior high school and is on juvenile probation for assault and battery. She recently had been transferred from another junior high because of a record of constant quarreling and aggressive behavior toward students and teachers. Within a month, Chris assaulted three classmates at her new school and attacked and injured a fourth. Although the principal and her probation officer were well aware of Chris' prior assaults, her teachers had never been told about her dangerous behavior.

Max
Max has a drug problem. It started with sneaking drinks from his parents' liquor cabinet while he was still in grade school. Max likes to go out his bedroom window after dark to drink beer and smoke marijuana with his buddies. He keeps a bottle of whiskey in his locker at school. Lately Max has begun using crack and selling it to other kids at school. Last week he was caught, after curfew, in the park — but the security guard just told him to leave. Yesterday the owner of a local market stopped Max after he shoplifted a bottle of scotch. The owner took the liquor away from Max, lectured him about stealing and told him never to come in his store again. Today the lunch monitor saw him smoking marijuana in the restroom. The monitor flushed the cigarette and said that next time he would report Max to the dean.

Tommy
Tommy has had a fascination with fire since he was a toddler. His parents took him to a child psychologist for a time and it seemed to help. Now that he's in high school, he sets small fires in wastebaskets there. The custodian caught Tommy throwing a lighted match into a trash can and took him to the

principal's office. Tommy admitted he had set fires every day that week at school. Tommy's parents pay for the damage to school property and agree to put Tommy back into counseling again. No one ever reports the arsons to local law enforcement.

Michael

Michael has been to court several times for burglarizing homes. He regularly cuts class with several friends and breaks into houses near the high school to steal money and jewelry. School staff members do not realize he is on probation, nor are they aware of his juvenile record. His probation officer and the local police do not know that he is missing from class so frequently.

Rosa

Rosa is in third grade and is usually an outgoing, happy child. Lately she has been very quiet in class and her teacher has tried to draw her out to discover what is troubling her. The police have been called to Rosa's house two nights in the last week by neighbors who have heard violent arguments. Each time, her mother tells the police that everything is fine and the officers leave after making sure no one in the family is hurt.

These examples, and many others like them, represent cases where crime or violence could have been prevented or a child could have been helped if an interagency information-sharing system had been in place.

Information Territorialism

Information management requires that the need for confidentiality *and* for disclosure be considered. Confidentiality protects a youth's right to privacy, avoids stigmatization, and allows the processes of education and rehabilitation to occur. Disclosure is warranted to assure that needed services and supervision will be provided and to increase school and community safety.

Record keeping and information management have long been an integral feature of American education. Horace Mann, as secretary of the Massachusetts State Board of Education, introduced systematic record-keeping procedures in the 1830s. In his annual reports, Mann recognized that these early school "registers" not only provided more accurate statistical reports and a means for students to measure their individual progress, but they also enabled teachers to track students' "mental and moral progress" as well. He believed that record maintenance afforded "a powerful incentive to good and dissuasive from evil" by identifying student progress and also serving as an "efficient preventive of irregularity in attendance." These records allowed teachers to place responsibility on particular offenders when a "delinquency of absence"

or other misbehavior occurred, Mann maintained.[2] In this way, record keeping and information management worked as an important social control.[3]

The benefits of record keeping that were cited by Mann motivated others to follow his lead. As other youth-oriented agencies were established, the practice also was extended outside educational systems. In addition to school records, today's youth may be the subject of numerous other records compiled by the juvenile court, law enforcers, probation officers and various social service agencies. Their records, too, measure the child's progress and work as important social controls.

Each agency dealing with a youth no doubt would be more effective if *all* accurate information regarding the youth that is in the hands of other public agencies was available to it and could be properly utilized. To protect the safety of staff and students, for example, it would be helpful for a school to have information on a student's past criminal activities, particularly where serious or violent offenses are involved. Similarly, law enforcement agencies could work more successfully with the criminally inclined student if they were provided with school attendance reports. Law enforcement could cooperate with schools in truancy-abatement programs. Returning children to school serves several purposes, including preventing neighborhood crime, providing needed adult supervision and placing students back in the educational setting.

The concept of information sharing is controversial. Early in this century, some held the view that school records on conduct, scholarship and character should not even be passed forward from teacher to teacher, to allow the student a clean slate with each promotion or transfer.[4] By mid-century, the pendulum of opinion had swung to the view that school records, even those containing anecdotal information, should be available not only to the juvenile courts and local police officials but also to such agencies as the CIA or FBI.[5]

This controversy also existed on the issue of confidentiality of juvenile justice records. Juvenile courts historically have operated under the assumption that a juvenile's records are to be kept confidential. When the Supreme Court considered the case of *In re Gault*[6] in 1967, which extended traditional due process rights to juveniles, it noted that the "claim of secrecy, however, is more rhetoric than reality."[7] For this reason, the American Bar Association thereafter recommended that states enact laws assuring the confidentiality of juvenile justice information. In 1984, as the ABA's Juvenile Justice Standards Implementation Project pointed out:

> *The different treatment of juvenile court records reflects the philosophy of the juvenile justice system as originally constituted. . . . The treatment-oriented philosophy. . .however, has been significantly eroded in recent years. Just as the ability of the juvenile courts to deal effectively with young criminals has been called into question, so too has the justification for treating juvenile records in such a protective fashion. The current concerns*

are not how to assure confidentiality of the juvenile court records, but rather how to assure that all the relevant law enforcement needs for the records can best be met.[8]

The need for information sharing has been recognized in other areas as well. The U.S. Attorney General's Advisory Board on Missing Children, for example, emphasizes the need for police, courts, welfare departments and schools to share information to thoroughly investigate cases of missing children. To facilitate such sharing, the Advisory Board recommends that privacy and confidentiality laws be modified to allow appropriate persons access to critical information.[9]

However worthy the need, agencies often refuse to share information with others, believing that the law does not allow them to do so. Statutes allowing disclosure are disregarded or given extremely narrow constructions. Each agency becomes a territory unto itself and does not give information to, or receive information from, any other agency. Decisions affecting youth and society at large are made without complete information or logic.

Information territorialism is counterproductive. Restrictions on sharing information, for example, hinder an agency's ability to identify serious offenders or to take appropriate actions to ensure public safety. The unavailability or suppression of information often prevents appropriate intervention.[10]

Confidentiality has not had the intended benign effect on youthful offenders, and, in fact, it has disastrously undermined the prevention and control of serious crimes they commit.[11] Rather than contribute to rehabilitation, confidentiality makes it difficult to impress offenders with a sense of responsibility for their acts.[12] Serious habitual offenders "fall through the cracks" of the juvenile justice system largely because youth-involved agencies do not fully cooperate with one another.[13]

The impact of information territorialism also is great in our nation's schools. Educational institutions by nature deal with the "whole" child. They teach the three R's — reading, 'riting and 'rithmetic. But schools also participate in a social process, bringing together those agencies and resources that can better prepare a child for adulthood.[14] Schools often are expected to disclose information to the juvenile courts or others, while such information is not always accorded to school systems.[15] When information is denied to the school, or the school denies information to other agencies, the educational process is curtailed.

Developing Information Policies and Cooperation

Information management by interagency child-serving professionals requires policies that assure compliance with applicable statutes. But they also must

recognize the need for cooperation by seeking or granting access to information when warranted. Information management must strike a proper balance between confidentiality and disclosure to avoid information territorialism.

Information-management policies may differ significantly from state to state or even from agency to agency. While agencies must carefully consider their information policies, they also must develop information-management procedures that allow full use of data from all agencies dealing with the child. Interagency cooperation is essential in this endeavor.

How does an interagency group develop information-management policies? We suggest the following steps:

Step 1: Appoint an "Information Management Committee."
Step 2: Determine what information is maintained by each agency in the interagency partnership.
Step 3: Evaluate the need for or usefulness of information maintained by each agency.
Step 4: Determine records statutes requirements.
Step 5: Determine exceptions to statutory requirements.
Step 6: Establish and implement appropriate records use and disclosure policies.
Step 7: Designate an "Information Management Liaison" or "Gatekeeper" at each participating agency.
Step 8: Periodically review the effectiveness and appropriateness of the policies established.

Step 1: Appoint an "Information Management Committee"

Members of the Information Management Committee should reflect the community's youth-serving agencies. A list of typical representatives follows:

- School staff.
- School-employed peace officers/security personnel.
- Law enforcement officials.
- Police officers or liaisons assigned to the school.
- Representatives from youth intervention or education programs (e.g., serious habitual offender programs, gang intervention programs, alcohol or substance abuse programs, etc.).
- Juvenile officers.
- Truancy officers.
- Juvenile court judges/court administrators.
- Probation officers.
- Parole officers.
- Prosecutors (e.g., state, district or county attorneys).
- Medical and nursing personnel.
- Public defenders.

- Child welfare agency personnel.
- Mental health agency personnel.
- Health and human service professionals.
- Other community or public representatives (e.g., political, religious, social, etc.).

The committee's mission would be to develop information-management policies following the steps suggested in this book. These policies would then be considered and adopted by the governing boards and the chief executives of all participating agencies. The committee's work also would provide a significant opportunity for representatives of youth-oriented agencies to exchange ideas, discuss problems and coordinate efforts.

Formation of an Information Management Committee won't just happen. It requires that at least one agency initiate the effort. (See the example letter inviting participation in Appendix D.)

Step 2: Determine Information Maintained

What records are there? Consider this list:

School Records

- General student information (e.g., name, address, telephone number, date of birth, sex, photograph, etc.).
- Family background (e.g., parents, guardian, addresses, ages, family living arrangement, siblings, etc.).
- Schedule (e.g., times of arrival or departure from school, classes, transportation, etc.).
- Academic performance.
- Special education evaluations (e.g., physical, mental, emotional, etc.).
- Extracurricular activities.
- Discipline reports.
- Attendance records.
- Medical/health records

Juvenile Justice Records

- Law enforcement records (e.g., arrests, contacts, fingerprints, photographs, etc.).
- Intervention or education program records (e.g., drug, alcohol, sex offender, behavior modification, etc.).
- Juvenile court records (e.g., official court documents, social studies, medico-legal reports, psychological reports, etc.).
- Prosecutor records.
- Institution and placement records (e.g., booking sheets, log books, diagnostic tests, incident reports, progress reports, etc.).

- Probation or parole investigation and supervision records (e.g., chrono entries, field notes, drug testing results, service plans, etc.).
- Protective services investigation and supervision records (e.g., emergency response reports, chronos, field notes, medical reports, visitation reports, service plans, reunification plans, etc.).
- Diversion records.

Other Records
- Child welfare agency records.
- Mental health records.
- Medical records.
- Drug/alcohol treatment.

In addition to discovering what records exist, the accuracy of the information should be examined. Inaccurate information clearly is harmful and agencies attempting to utilize it must review how information is collected, maintained, verified and updated. An incidental benefit of the work of the Information Management Committee will be to improve information-management practices and the quality of information collected within each organization.

Step 3: Evaluate Information Needs
Information can range from the trivial to the vital. The Information Management Committee, therefore, must next evaluate the information needs of each of the participating youth-involved agencies. Decide which records give the best data in an easily usable form. Decide which information not currently available is needed for each agency to better perform its role with children, and then determine ways to legally obtain and share it.

Step 4: Determine Records Statutes Requirements
To assure legal compliance, the Information Management Committee must learn what the statutes and legal procedures require. A good way to begin is to contact the state department of education, social welfare, human services, attorney general, state police or central records bureau to determine if any state-specific publications on confidentiality are available. Some states have publications that summarize necessary requirements.[16]

The Individual's Right to Privacy
Understandably, the right to privacy is precious to all Americans. Although the law recognizes a right to privacy, the idea was first presented in a law review article less than a century ago. Samuel D. Warren and Louis D. Brandeis urged recognition of an explicit right to privacy after the press intruded into a private party given by Warren, one of Boston's social elite.[17]

Specifically, they claimed that:

Political, social and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. . . . Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that "what is whispered in the closet shall be proclaimed from the housetops." For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of portraits of private persons; and the evil of the invasion of privacy by the newspapers. . . .[18]

The United States Supreme Court has recognized a family's "right to privacy." Family privacy is considered "of similar order and magnitude as the fundamental rights specifically protected" by the United States Constitution.[19]

As the law developed, four forms of privacy protections were recognized. They include protections against:

- Unreasonable intrusion upon the seclusion of another.
- Appropriation of another's name or likeness.
- Unreasonable publicity given to another's private life.
- Publicity that unreasonably places another in a false light before the public.[20]

Of these protections, the prohibition against publishing private facts is most relevant to schools and other youth-involved agencies. Minors have these rights just as adults do.[21] Nevertheless, despite a right to privacy, personal information considered public may be disclosed.[22] Also, public officials enjoy considerable discretion where disclosures are made in connection with their duties.[23]

The Public's Right to Know[24]

Balanced against the individual's right to privacy is the right of the public to obtain certain information for the health, safety and welfare of the public at large. During the past two decades, this right to know has caused many changes in records laws that apply to both juvenile and adult public records. Unfortunately, many professionals are not aware of these changes and continue to operate as they did for years.

The historical basis for confidentiality of juvenile records is the notion that a minor's contacts with the courts or others in authority should be kept confidential so that the minor is free to change behavior without being labeled as a juvenile delinquent or troublemaker. This cloak of privacy allows education and rehabilitation to be implemented. However, it is difficult to educate or rehabilitate without comprehensive information sharing.

In most states, juvenile codes were written during the early part of the 20th century when the philosophy of rehabilitation predominated juvenile courts, so the sections controlling juvenile court records reflected this protectionist view. Many times the codes even prevented juvenile justice agencies from sharing information with each other when they were working with the same minor. Most codes did not recognize the important role that schools play in delinquency prevention, so schools were entirely left out of the information circle.

Many practitioners in the juvenile justice system today realize the need to remove the statutory and policy barriers that prevent necessary information from being accessed. If all agencies could share each other's information, they could make better decisions about dealing with the misbehavior they are trying to correct. In these times of shrinking resources, no place exists for needless turf battles over records. Cooperative service delivery is more efficient, less costly and provides more chance for success with a problem youth and the youth's family. The minor's right to privacy and the court's mandate to rehabilitate and protect minors thus must be balanced against the public's right to know what is happening in its courts and be protected by the court's decisions.

Public pressure in recent years due to increased serious juvenile crime has caused juvenile courts to begin to hold minors more accountable for the crimes they have committed and to punish them, as well as to provide rehabilitative services.[25] Today's focus on protecting the community is causing the veil of secrecy to be lifted from juvenile records in many states. But significant statutory and other restrictions remain in most jurisdictions.

Federal Records Statutes

In response to concern over the invasion of individual privacy, the federal government has adopted numerous confidentiality requirements. Since many state statutes are modeled after federal codes, it is important to know something about them. Those of particular interest include:

Family Educational Rights and Privacy Act of 1974 (FERPA): The Family Educational Rights and Privacy Act of 1974,[26] often referred to as the "Buckley Amendment" after its sponsor, assures parents of students, and students themselves if they are over 18 or are attending an institution of postsecondary education, these rights: (1) to be informed of FERPA rights; (2) to review and inspect student education records; (3) to challenge in a hearing, if necessary, the content of any education records that are believed to be inaccurate, misleading or otherwise in violation of a student's rights; (4) to prevent the disclosure of personally identifiable information, with certain limited exceptions, in the absence of prior written consent; and (5) to file complaints with the Family Educational Rights and Privacy Act Office, which was established to assure protection of the various other rights under

the Act.[27] FERPA applies to any public or private educational agency or institution that receives funds from a program administered by the Secretary of Education.[28] The Secretary also has general authority, including rule-making powers, with regard to FERPA's provisions.[29] For a more detailed discusion of FERPA, and some suggested changes to it, see Appendix C.

Education for All Handicapped Children Act (EAHCA): The Education for All Handicapped Children Act (EAHCA) provides state funding to assure that all handicapped children have a free appropriate public education that emphasizes special education and related services designed to meet their unique needs.[30] Various procedural safeguards are required to be extended by participating states. Among these safeguards are requirements that the parents of a handicapped child have an opportunity to examine all relevant records with respect to the identification, evaluation and educational placement of their child, as well as that the records are kept confidential.[31]

Crime Control Act of 1973: The Crime Control Act of 1973[32] assures that criminal history record information collected, stored or disseminated by agencies that receive federal funds is done so in a manner to insure the completeness, integrity, accuracy and security of that information and to protect individual privacy.[33] The Act applies to all states and individuals where the collection, storage or dissemination of information has been funded in whole or in part by the Law Enforcement Assistance Administration subsequent to July 1, 1973.[34] Use of information obtained from the Federal Bureau of Investigation's Identification Division or the FBI/NCIC (FBI/National Crime Information Center) system also may require compliance with its provisions.[35]

Youth Corrections Act: The Youth Corrections Act requires that records of juvenile delinquency proceedings in federal district courts be safeguarded from disclosure to unauthorized persons.[36] The juvenile and his parents or guardian must be advised in writing of rights relating to the juvenile's record.[37]

Freedom of Information Act: The Federal Freedom of Information Act (FOIA)[38] requires agencies to make all agency records available for inspection and copying on request of any person unless one or more of nine exemptions apply. If an agency denies a request for inspection, the person may take the matter before a federal judge and seek a court order releasing the records. Most state freedom of information and public records statutes are patterned after this statute and the Federal Privacy Act of 1974, which is discussed later. Since so many states leave the matter of access to school rec-

ords to their state public records statutes, it is helpful to examine the FOIA and Privacy Act in order to know which records are confidential and which are open to the public under this type of statute.

The Privacy Act of 1974: The Federal Privacy Act of 1974[39] states that no federal agency may disclose individually identifiable records maintained on a records system which can be retrieved by use of the person's name or identification number unless the person consents to the release or the request fits certain exemptions.

State Confidentiality Requirements

State FERPA Provisions: Although many states expressly or implicitly have adopted the protection afforded by the Family Educational Rights and Privacy Act, others have enacted additional protections relative to student records.[40] State student records laws may permit greater access than is given under the federal FERPA statute as long as the state's requirements are not in conflict with federal guidelines. For example, in California students are permitted access to thier own records at age 16 or upon completing the 10th grade. This restriction is more liberal than the federal FERPA requirement that a student must be 18 or enrolled in a postsecondary educational institution to gain access to their records.

State Freedom of Information and Public Records Acts: The majority of states do not have a specific statute regarding who may have access to school records. In some states, the public records statute states that personally identifiable student records are exempt from public inspection. In others, the statute is general and only states that all public records are open for inspection unless specifically declared confidential by another law or order. In those cases, the federal FERPA statute would control since it is a specific statute on student records and no similar state statute contradicts it.

School Counselor — Student Confidentiality: Some states have adopted statutes making confidential information of a personal nature that is disclosed in confidence by a student or the student's parents to a school counselor. The information usually is not made part of the student's record or disclosed without student or parental consent.[41] However, if the information involves child abuse, endangers life, or if it involves information about a crime that was committed or is about to be committed, that data must be reported to appropriate authorities.

Statutory Privileges: Legal privileges not to disclose information exist in most states for physicians, psychologists, nurses and others. Such individuals

may withhold information or prevent another person from releasing information in legal proceedings unless the privilege is waived or unless the court orders otherwise.

Juvenile Court Records: Most states have provisions in their juvenile codes for access to juvenile justice records.[42] Even without specific statutory authority, courts have inherent authority to control their own juvenile records.[43] Because the juvenile court system originally was designed to rehabilitate rather than to punish, courts usually have maintained the confidentiality of such records. However, in recent times, more information is being made available to others outside the juvenile court setting. Part II of this book discusses in detail each state's rules regarding juvenile delinquency records.

Law Enforcement Records: Juvenile codes typically establish the confidentiality of law enforcement records pertaining to juveniles. These records include those regarding the diversion, detention or investigation of crimes, as well as the apprehension of alleged offenders. State or local law enforcement agencies may be involved. Confidentiality requirements and exceptions usually parallel those concerning juvenile court records. See Part II for specific information regarding the juvenile law enforcement records statutes of each state.

Child Abuse and Welfare Records: Every state has enacted legislation or regulations regarding child abuse, neglect and welfare records. With some exceptions, these provisions require that such information be kept confidential.[44] Most states have a central registry for access to information contained in interagency child abuse records. A requirement for a state grant from the National Center on Child Abuse and Neglect is that the state provide "methods to preserve the confidentiality of all [child abuse and neglect] records in order to protect the rights of the child, his parents or guardians."[45]

Mental Health & Medical Records: Youths may be the subject of mental health and medical records, including those regarding alcohol or drug abuse. In many states, minors 14 years of age or older may voluntarily admit themselves to a mental hospital or a treatment facility. Resulting records usually are subject to statutory confidentiality requirements. In most instances, however, the youth may sign a written release of the information to an agency providing services to him or her.

Step 5: Determine Exceptions to Statutory Requirements

Through the previous steps, the committee should have determined which records should be used cooperatively. If the information is thought to be con-

fidential, exceptions to statutory requirements should be discovered and implemented.

Is the information really confidential?

Information generally is not considered confidential unless it is private. The right to privacy is not an absolute right to be left alone or to live one's life in utter privacy, nor is it a right to be free, at all times, from the prying eyes of the public or of a public recounting of the facts of a seemingly private incident.[46] Instead, this right protects against intrusion by the release of information that might result in actual harm or damage, shame or humiliation, or that might constitute a violation of one's interest in keeping his or her personal background and interests private.[47]

In applying the law, there is often a "clang effect." Even the narrowest law reverberates so that its clang affects other, even remote areas. Confidentiality is such an area of the law. To avoid the "clang effect," it is important for the Information Management Committee to determine whether information wanted for exchange is really private information at all.

Under the Family Educational Rights and Privacy Act, for example, information is categorized as either "directory" or "non-directory." Consent is not required for the disclosure of directory information.[48]

The FERPA law has yet to be used to deny funding to any educational institution. Although its language sounds ominous, it has not functioned that narrowly.

Directory information is not considered private. The educational institution itself determines what constitutes directory information and a public notice informs students or parents of this designation.[49] Typically, directory information includes the following: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, most recent previous educational agency or institution attended by the student, and other similar information.[50]

It has been suggested that "other similar information" may include any non-private information, such as information that is available from independent or public sources or that is routinely made available.[51] A photograph,[52] a student's class schedule[53] or even an attendance record[54] may, for example, qualify as directory information. Accordingly, even under FERPA, considerable information — directory information — may be made available to others.

FERPA requires student or parental consent for the disclosure of personally identifiable or non-directory information.[55] Even then, various exceptions exist.[56] As a general rule, all material included in a student's education record other than directory information would be classified as non-directory. This may include items such as the student's complete transcripts or report cards,

family background or socioeconomic information, psychological evaluations, and other personal information in which the student is directly identified or the identity of the student could easily be traced even though the student's name is not recorded.[57]

FERPA applies only to educational records that are directly related to a student. The records are maintained by an educational agency or institution or by a party acting for the agency or institution.[58] A record includes any information or data *recorded* in any medium such as handwriting, print, tapes, film, microfilm and microfiche.[59]

"Common knowledge" is not an official record. FERPA and state records laws do not prohibit comment on, or discussion of, facts about a minor that are learned independently of the minor's official records.[60] Therefore, consent is not required to pass along information that is learned from sources such as newspapers, court records, public records, conversation and personal contact.[61] This information may include such "street" facts such as where a student goes after school, who the juvenile spends time with, what time the minor arrived at the high school prom, a youth's reputation and considerable other information.

FERPA provides only one example where information thought confidential may not be. The Freedom of Information Act (FOIA)[62] also provides examples of how information that may appear "private" is actually disclosable. Most states' public records acts are similar to FOIA. In states that have no state juvenile records or state educational records statutes, their public records acts should control access to these records. Knowing how FOIA operates should give the Information Management Committee insight into how its states' public records laws will operate in regard to records it needs.

FOIA "seeks to permit access to official information long shielded from public view, attempts to create a judically enforceable public right to secure such information from possibly unwilling official hands, and attempts to provide a workable formula which balances and protects all interests, yet places emphasis on responsible disclosure."[63]

A category of record that FOIA protects, which school and juvenile records arguably fit into, is "personnel, medical and similar files that would constitute a clearly unwarranted invasion of privacy."

Under normal circumstances, information in government records regarding intimate family relationships, personal health, religious and philosophical beliefs, and matters that would prove personally embarrassing to an individual of normal sensibilities should not be disclosed.[64]

How does an agency decide if release would create an invasion of privacy?
In order to determine if disclosure of information is "a clearly unwarranted invasion of personal privacy" under FOIA, the public interest purpose of

disclosure must be balanced against the potential invasion of individual privacy.[65] The agency, or the court if the agency declines to release the record, must balance the right of privacy of the affected individual against the right of the public to be informed, tilting the balance in favor of disclosure.[66] In interpreting state public records statutes, these same principles apply. The committee's legal advisers will need to carefully study them to see how they have been applied in their jurisdiction and to identify ways to make information sharing work.

Is there a disclosure requirement?

Teachers, school administrators and others are required to report crimes that occur on campus and any known or suspected cases of child abuse or neglect.[67] School officials face liability for not disclosing needed information. If disclosure is required, the information must be released.[68] Conversely, some juvenile courts now are required to provide information to schools to enhance the safety of students and staff.[69]

Is there a specific allowance of disclosure?

Where information may potentially be considered confidential, the Information Management Committee should determine whether a proposed disclosure is allowed under the statute. This will usually involve a careful review of the statute.

Examples of allowable release of student records pursuant to the Family Educational Rights and Privacy Act *without parental consent* follow:

- *To school officials with "legitimate educational interests."*[70] As interpreted by the Family Educational Rights and Privacy Act Office, this exception is narrowly construed. Persons to whom information may be released must have an interest in the educational welfare of the student within the concept of parental responsibility for the development and well-being of the child.[71] Very simply, information may be disclosed where a parent would be expected to concur in that decision.[72]
- *To "officials of another school or school system in which the student seeks or intends to enroll."*[73] They must make an attempt to notify the student or parent of the disclosure; provide copies of the records on request to the student or parent; and provide a challenge hearing on request.[74]
- *To "parents of dependent students."*[75] This is defined by the Internal Revenue Code.
- *To "eligible students."*[76] An eligible student is defined as one who is over age 18 or is attending an institution of postsecondary education.
- *To "comply with a court order or subpoena."*[77] A reasonable effort must be made, however, to contact the student or parent in advance of compliance.[78]
- *In an emergency, if the knowledge of such information is necessary to pro-*

tect the health or safety of the student or other persons.[79] Whether information is necessary for this purpose is determined, according to the Secretary of Education's regulations, after considering such factors as: the seriousness of the health or safety threat; the need for the information to meet the emergency; whether the persons to whom the information is disclosed are able to deal with the emergency; and the extent to which time is of the essence in dealing with the emergency.[80] Although this exception may be available to deal with student crime and violence, the exception generally is construed to require an actual, present emergency. Thus, it does not allow disclosure where a student has a significant potential for crime or violence that has not yet presented itself.[81]

- *Other Exceptions*: FERPA provides for other exceptions including: disclosure to certain educational authorities for audit purposes; in connection with student financial aid programs; pursuant to state laws adopted before November 19, 1974; for educational studies; and to accrediting organizations.[82]

An examination of the Federal Youth Corrections Act, used in federal district courts, similarly reveals disclosure opportunities typical of many delinquency records statutes.[83] Under its provisions, records may be released by the court to the extent necessary to meet the following circumstances:

- Inquiries received from another court of law.
- Inquiries from an agency preparing a pre-sentence report for another court.
- Inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position with that agency.
- Inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court.
- Inquiries from an agency considering the person for a position immediately and directly affecting national security.
- Inquiries from any victim of the juvenile's delinquency, or if the victim is deceased, from the immediate family of the victim, related to the final disposition of the juvenile by the court.

Where a juvenile is prosecuted as an adult or found guilty of committing an act which, if committed by an adult, would be a felony — a crime of violence or other serious offense that would send an adult to prison — greater liberality in disclosure exists. A juvenile's name and picture may be made public when the juvenile is being prosecuted as an adult.[84] Under some circumstances, the juvenile's fingerprints, photographs and other information may be disclosed or even transmitted to the Identification Division of the Federal Bureau of Investigation.[85]

State statutes sometimes allow greater disclosure than the Federal Youth

Corrections Act. For example, Illinois law provides that following "any adjudication of delinquency for a crime which would be a felony if committed by an adult, the state's attorney shall ascertain whether the minor respondent is enrolled in school and, if so, shall provide a copy of the dispositional order to the principal or chief administrative officer of the school."[86] Access to the record is limited, however, to the principal or chief administrative officer of the school and any guidance counselor designated by him.[87]

As can be seen, many legal avenues exist for juvenile delinquency records to be disclosed to others.

Can other records or information be disclosed?
Education records, public records and juvenile records statutes have specific exceptions to confidentiality requirements. Each statute should be reviewed to determine its own exceptions. Part II provides some further information about those statutes.

Is disclosure allowed by the statute?
Sometimes statutes allow agencies to develop their own procedures for release of information. If so, the Information Management Committee needs to consider how this can be accomplished.

For example, under the Family Educational Rights and Privacy Act, an educational institution may disclose directory information without student or parental consent unless the student or parent specifically refuses to allow this.[88] A student or parent who refuses to allow information to be considered "directory" must inform the institution in writing within a time period fixed by the institution and specified by public notice.[89]

In practice, few objections to disclosure are ever filed. Because the educational institution itself defines what will constitute directory information, the disclosure of information may be facilitated by carefully defining what constitutes directory information.[90] (See the sample definition in Appendix C.)

An educational institution may even disclose non-directory information in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that the parents, guardian or any other person(s) acting as guardian(s), and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.[91] Pursuant to this authority, for example, general orders were entered by the Los Angeles Juvenile Court requiring that school records be made available to the Probation Department and the Department of Children's Services for the purpose of using the information in making recommendations to the juvenile court.[92] Where information is required, a juvenile court may facilitate its dissemination. (See the sample orders in Appendix D.)

Non-directory information also may be disclosed with the consent of a stu-

dent's parent or guardian if the student is under 18 years of age.[93] Where a student is a ward of the court, the court may give the required consent.[94] Under this authority, a juvenile court may allow a broad exchange of information. Thus, the exchange of records regarding minors who are wards or dependent children of the court, or who are the subject of certain investigations, has been allowed by general court order.[95] Some of the agencies having records that may be made available or inspected include: mental health services, family law departments, conciliation courts, public schools, private schools, departments of children's services, public guardians offices, child advocates offices, therapists, foster parents and institutional placements.

Most juvenile codes provide explicitly or implicity that the court may release not only its own records, but also law enforcement records to schools or other interested persons, either by general or special court order. The juvenile court usually has exclusive authority to determine the extent to which juvenile records can be released to others.[96] Therefore, a court may facilitate information available to schools or others where appropriate.

In some instances, the juvenile has the ability to sign a consent to release information to the agency that requires it. (A sample consent form is found in Appendix D.)

Can the information be obtained elsewhere?

If all attempts to gain needed records are foreclosed, see if the information is available elsewhere. Information may, for example, be confidential in the hands of a school but not in the hands of a student's part-time employer or other person.

Are health and safety concerns involved that warrant disclosure?

A school has a duty, under certain circumstances, to protect fellow students or others from crime or violence.[97] This duty generally supersedes any records obligations.

Where information suggests that a person presents a serious danger to others, the obligation exists to use reasonable care to protect the potential victim.[98] As held by one court involving a mental patient: "In this risk-infested society we can hardly tolerate the further exposure to danger that would result from a concealed knowledge of the therapist that his patient was lethal."[99] Although the court recognized the public interest in safeguarding patient confidentiality, it stated: "The protective privilege ends where the public peril begins."[100]

Many states express a legislative policy concerning the proper balance between confidentiality values and safety values in favor of safety by requiring release of information where a dangerous person is involved.[101] Information-management policies, accordingly, must recognize that despite statutory re-

quirements, the law and common sense dictate that information be disclosed where health and safety concerns warrant.

Will the parents or guardian consent to disclosure?
A parent or guardian has the authority to consent to disclosure. In many cases, the parents or guardians are very concerned with their child's problems. If cooperation will help with their child's problems, they are almost always eager to cooperate if asked.

Step 6: Implement Appropriate Records Use Policies
It is important to carefully define the confidentiality policy to all concerned persons and agencies. What information will and will not be kept confidential and how disclosures are made should be clearly understood. Where information is clearly defined as non-confidential, no one can validly claim a violation of confidentiality requirements.

Step 7: Designate Information Management Liaisons or Gatekeepers
To assure that confidentiality and disclosure policies are properly implemented, each participating agency should designate an "Information Management Liaison" or "Gatekeeper." Since the adoption of freedom of information legislation, many agencies will already have an individual designated to answer requests from the public for information. To assure proper compliance with applicable confidentiality laws, the Gatekeeper should have expertise in records rules.

The Gatekeeper should be given appropriate responsibility and authority. A list of possible duties follows:

- Establish and maintain a library or resource center for information-management materials (e.g., statutes, regulations, policies, books, booklets, etc.).
- Present periodic in-service programs for agency employees regarding confidentiality requirements.
- Make requests for information where required.
- Receive and respond to requests for information.
- Develop forms to make or respond to information requests.
- Maintain records of information requests and responses.
- Suggest changes in information-management practices.
- Make provisions for the physical safety of records from fire, theft and alteration.

Step 8: Periodically Review Information-Management Policies
Policies should be reviewed periodically to insure that applicable laws are followed and that information-management procedures are effective. This review should involve representatives from all sharing agencies and Informa-

tion Management Liaisons/Gatekeepers.

Ask the following questions when reviewing policies:

- Have any new or revised statutes been enacted that affect the information-management policies in use?
- Have any complaints or criticisms been made (e.g., letters, verbal statements, media stories, lawsuits, etc.) regarding information-management policies or practices?
- Have any compliments been made regarding information-management policies or practices?
- What problems have been experienced regarding information management?
- Should other agencies participate?
- Should additional records be exchanged?
- What changes should be made to improve policies and practices?

Information Integrity and Cooperation

Those who work with young persons realize just how powerful information can be. Used properly, it can protect the public as well as promote a better future for the child. This information must be managed with integrity.

In this book, we urge proper disclosure of information among youth-involved agencies. These agencies must work cooperatively to be effective. Agencies working toward similar goals must, of necessity, share information, ideas and alternative solutions. Youth-serving professionals with a need to know should have access to interagency information. Where information is shared and analyzed carefully, all agencies can make more informed and better decisions. Moreover, their capacity to prevent further juvenile crime and violence will be increased.

In the past, information-management practices by many agencies simply have involved assuring the confidentiality of records. Perhaps this was appropriate when juvenile offenses were trivial or sporadic. However, where the potential for serious crime and violence is as great as it often is today, confidentiality must give way to disclosure. Ideally, federal and state legislators eventually will address this need. Until they do, schools and other agencies must learn how to use existing laws to gain access to information that is needed by one and all to better serve children and society.

Endnotes

1. Fictitious names are used for the examples in this section.

2. Heck, *A Study of Child-Accounting Records* (Columbus, Ohio: Ohio State University, 1925), p. 184.

3. Wheeler, ed., *On Record: Files and Dossiers in American Life* (New York: Russell Sage Foundation, 1969), p. 14.

4. Chancellor, *City Schools — Their Management*, Washington, D.C., School District of Columbia, 1908, p. 180 (cited in Heck, *A Study of Child-Accounting Records*, supra, p. 17).

5. Wheeler, ed., *On Record: Files and Dossiers in American Life*, supra, p. 56, Table 5. See also Coffee, *Privacy Versus Parens Patriae: The Role of Police Records in the Sentencing and Surveillance of Juveniles*, 57 Cornell L. Rev. 571 (1972).

6. 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967).

7. 387 U.S. at 24.

8. American Bar Association, *Criminal Justice*, Vol. 12, No. 1 (1984).

9. U.S. Department of Justice, Office of Juvenile Justice and Delenquincy Prevention, *U.S. Attorney General's Advisory Board on Missing Children Report on Missing and Exploited Children: Progress in the '80s* (1987), p. 22.

10. See, e.g., Illinois Criminal Justice Information Authority, *Juvenile Justice Information Policies in Illinois* (1986), p. 1.

11. Czajkoski, "Why Confidentiality in Juvenile Justice?" 33 *Juvenile & Family Court Journal* (1982):49.

12. Comment, *Delinquency Hearings and the First Amendment: Reassessing Juvenile Court Confidentiality Upon the Demise of "Conditional Access,"* 13 U.C. Davis L. Rev. 123, 135 (1979).

13. Heck, Pindur & Wells, "The Juvenile Serious Habitual Offender/Drug Involved Program: A Means to Implement Recommendations of the

National Council of Juvenile and Family Court Judges," 36 *Juvenile & Family Court Journal* (1985):27, 32.

14. Brown, "Coordinating Professional Efforts for Children with School Problems," 15 *Children* (1968):214; Buxton, "Developing Guides for Cooperation Between the Juvenile Court, Welfare Department, and Schools," 47 *Child Welfare* (1968):266.

15. Missouri Juvenile Justice Review Committee, *Confidentiality: A Review of the Provisions Relating to Youth in Missouri* (1981), p. 15.

16. For some examples, see: *A Handbook Regarding Confidentiality as a Right of Pupils in Counselor-Pupil Exchanges* (California State Department of Education, P.O. Box 271, Sacramento, CA 95802); *Administrative Guidelines: Pupil Records — For the Development of Policies and Procedures Governing Pupil Records* (Los Angeles County Office of Education); *Juvenile Justice Information Policies in Illinois* (Illinois Criminal Justice Information Authority, 120 South Riverside Plaza, Chicago, IL 60606); *Confidentiality: A Review of the Provisions Relating to Youth in Missouri* (Missouri Juvenile Justice Review Committee, Jefferson City, MO 65102).

17. Prosser, *Privacy*, 48 Calif. L. Rev. 383 (1960).

18. Warren and Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890).

19. *Griswold v. Connecticut*, 381 U.S. 479, 495, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

20. Keeton, *Prosser and Keeton on the Law of Torts*, (5th ed., 1984).

21. *Merriken v. Cressman*, 364 F. Supp. 913 (E.D. Pa. 1973).

22. See *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975).

23. *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).

24. See generally, Search Group, Inc., *Criminal Justice Information Policy: Privacy and Juvenile Justice Records* (1982).

25. National Council of Juvenile and Family Court Judges, "The Juvenile

Court and Serious Offenders: 38 Recommendations," *Juvenile & Family Court Journal* (Summer 1984).

26. 20 U.S.C. Section 1232g.

27. Rapp, *Education Law*, Section 13.04 [3][d].

28. 20 U.S.C. Section 1232g(a)(1)(A).

29. 34 C.F.R. Section 99.1.

30. Rapp, *Education Law*, Section 10.03[4][a].

31. 20 U.S.C. Sections 1412(2)(D), 1417(c). See also Rapp, *Education Law*, Section 10.03[4][h][ii].

32. 42 U.S.C. Section 3701, et seq.

33. 28 C.F.R. Section 20.1.

34. Ibid.

35. Ibid.

36. 18 U.S.C. Section 5038(a).

37. 18 U.S.C. Section 5038(b).

38. 28 U.S.C. Section 552.

39. 5 U.S.C. Section 552(a).

40. See Rapp, *Education Law*, Table T7.

41. See, e.g., Cal. Educ. Code Section 35301; Ky. Rev. Stat. Ann. Section 421.216.

42. Search Group, Inc., *Criminal Justice Information Policy: Privacy and Juvenile Justice Records* (1982). For an example of these provisions, see Larson, "Model Statute on Juvenile and Family Court Records," 32 *Juvenile & Family Court Journal* (1981):8.

43. Ibid., pp. 54-56.

44. See generally, National Legal Resource Center for Child Advocacy and Protection, *Access to Child Protective Records — A Basic Guide to the Law and Policy*, American Bar Association Young Lawyers Division (1979).

45. 42 U.S.C. Section 5101.

46. Rapp, *Education Law*, Section 13.02[2][e][v].

47. Ibid.

48. 34 C.F.R. Section 99.30.

49. 34 C.F.R. Section 99.37. The determination is made in the school's FERPA policy. For a policy form, see Rapp, *Education Law*, Form F7.03.1.

50. 34 C.F.R. Section 99.3.

51. Rapp, *Education Law*, Section 13.04[7][a].

52. Ibid.

53. Comment, *The Confidentiality of University Student Records: A Common Law Analysis*, 1976 B.Y.U. L. Rev. 477, 482.

54. See *Brogan v. School Comm. of Westport*, 401 Mass. 306, 516 N.E. 2d 159, 43 Educ. L. R. 362 (1987). (Employee attendance and absentee records are subject to disclosure.)

55. 34 C.F.R. Section 99.30.

56. 34 C.F.R. Section 99.31.

57. 34 C.F.R. Section 99.3.

58. Ibid.

59. 34 C.F.R. Section 99.4.

60. *Frasca v. Andrews*, 463 F. Supp. 104 (E.D.N.Y. 1979).

61. Rapp, *Education Law*, Section 13.04[7][a][i].

62. 28 U.S.C. Section 552.

63. *Dept. of the Air Force v. Rose*, 425 U.S. 352, 96 S. Ct. 1592, 48 L. Ed. 2d 11 (1976).

64. *Columbia Packing Co., Inc. v. U.S. Department of Agriculture* (D.C. Mass. 1976) 417 F. Supp. 651.

65. *Wine Hobby U.S.A., Inc. v. U.S. Internal Revenue Service* (C.A. Pa. 1974) 502 F.2d 133.

66. *Getman v. N.L.R.B.* (1971) 450 F.2d 670, 146 U.S. App. D.C. 209.

67. See, e.g., Cal. Pen. Code Sections 626 and 11164, et seq.

68. See *Civil Liability for Teachers' Negligent Failure to Report Suspected Child Abuse*, 28 Wayne L. Rev. 183 (1981).

69. See, e.g., Cal. Welf. and Inst. Code Section 827(b); Fla. Statutes Ann. Section 230.335.

70. 34 C.F.R. Section 99.31.

71. Rapp, *Education Law*, Section 13.04[7][b][ii].

72. Ibid.

73. 34 C.F.R. Section 99.31. In an effort to make it more difficult to conceal missing children, it actually has been suggested that schools be required to transfer and receive student records rather than permit parents or others to do so. See also U.S. Deptartment of Juvenile Justice and Delinquincy Prevention, *U.S. Attorney General's Advisory Board on Missing Children Report on Missing and Exploited Children: Progress in the '80s* (1987), p. 17.

74. 34 C.F.R. Section 99.34.

75. 34 C.F.R. Section 99.31.

76. 34 C.F.R. Section 99.4.

77. 34 C.F.R. Section 99.31.

78. Ibid.

79. 20 U.S.C. Section 1232(b)(1)(I); 34 C.F.R. Section 99.31.

80. 34 C.F.R. Section 99.36.

81. A helpful revision of FERPA would be to delete the requirement of an emergency and provide that the Secretary may by regulation allow the release of education records to apropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons. Regulations could recognize and incorporate appropriate confidentiality safeguards.

82. 34 C.F.R. Section 99.31.

83. 18 U.S.C. Section 5038.

84. 18 U.S.C. Section 5038(e).

85. 18 U.S.C. Sections 5038(d), (e) and (f).

86. Ill. Rev. Stat., ch. 37, Paragraphs 702-9(D).

87. Ibid.

88. 34 C.F.R. Section 99.37.

89. Ibid.

90. 34 C.F.R. Sections 99.3, 99.37.

91. 34 C.F.R. Section 99.31(a)(9).

92. Los Angeles County Office of Education, *Administrative Guidelines: Pupil Records* (1985-1986), p. 17.

93. 34 C.F.R. Section 99.30.

94. 34 C.F.R. Section 99.3.

95. See G. Gutierrez, Presiding Judge Juvenile Court, Los Angeles County, *Memorandum Regarding Confidentiality Policy* (October 16, 1985), p. 3.

96. See, e.g., *TNG v. Superior Court*, 4 Cal. 3d 767 (1971).

97. See generally, Rapp, Carrington and Nicholson, *School Crime and Violence: Victims' Rights* (National School Safety Center, 1986).

98. See *Tarasoff v. Regents of the Univ. of Cal.*, 17 Cal. 3d 425, 551 P. 2d 334, 131 Cal. Rptr. 14 (1976).

99. Ibid., 551 P. 2d at 347.

100. Ibid.

101. Ibid. 551 P. 2d at 347 n. 13.

Part II

Juvenile Records Statutes Analysis

The National School Safety Center strongly promotes partnerships among schools, law enforcement and other juvenile justice agencies to create safer and more effective schools, as well as to create a safer community environment. Use of this information will enable each community to recognize and overcome legal barriers to the successful operation of these partnerships. Statutes change from year to year, so the reader should thoroughly review current statutes to ensure their applicability. Legal summaries, while useful, are not a substitute for reviewing the statutes themselves.

It is not unusual to discover that those children needing special attention in school are the same children receiving attention from the police, probation department, welfare department, protective services, social services, mental health, prosecutor's office and juvenile court judge. Unfortunately, it also is common for few, if any, of these agencies to know which other agencies are concerned about the child and the child's family and are devoting staff time and resources to them.

Cooperative efforts between state and local agencies that work with children result in better coordinated and more efficient service to the children, their parents and the community as a whole. This avoids duplication of services and better utilizes our shrinking resources. Interagency groups that identify and solve problems common to all systems have been vastly successful in causing the system itself to change for the better. An excellent example of such groups is the multidisciplinary child abuse teams that operate in many states. These "M-teams" enable many agencies to investigate, provide services and monitor child abuse cases as an interagency effort.

We live in an information society. Networks of people talking to each other and sharing ideas, information and resources are rapidly replacing hierarchies and bureaucracies. It is time to create local networks of all agencies serving children: schools, law enforcement, social services, medical and mental health institutions, and the juvenile court system. This type of interagency network has a better chance of success than if each agency works independently.

Once agencies decide to work together, misunderstandings and misperceptions about juvenile records laws can be a major barrier in creating interagency networks and delivering cooperative services to these children and their families. This causes agency staff members to believe they cannot work with other agencies and share information with other professionals who are dealing with the same child and family. However, close examination of records statutes often turns up simple ways for legally sharing information and for working together to provide needed services.

As a general rule, most records kept by child-serving agencies are controlled by the juvenile court judge. If not named specifically in the confidentiality statute, an agency seeking release of a juvenile's records can ask the court's permission for access to juvenile records. This can be accomplished by a general court order allowing the interchange of records among agencies. Only rarely should a judge need to issue separate orders in each child's case. It is a good idea to invite the juvenile court judge to attend interagency meetings to get a clear idea of the activities of the group and assess its legitimate interest in the work of the court. Sample court orders for release of records are located in Appendix D.

Many states allow the child and his parents to have access to the child's records. In those states, a simple way to allow for the sharing of records is to obtain a signed consent for release of records from the child and his parents at the time the agency begins working with them. Many agencies have been using release of information forms for years with little or no complaint from parents or children. With this waiver of confidentiality, the agency is free to share information as the need arises. A sample release is in Appendix D.

The following sections generally discuss each state's juvenile records statutes. By allowing use of all records, we allow for better investigations and improved service delivery by professionals charged to work with children in an official capacity. The time has come for giving child-serving agency professionals who need to know this information the right to know what is contained in the records of other agencies. It is time for the walls around such records to come tumbling down.

Alabama

12.15.100, 12.15.101, Code of Alabama, 1975

The following parties have access to the social, medical, and pyschiatric or psychological records of delinquent children and status offenders:

- the judge, probation officers and professional court staff;
- representatives of public or private agencies providing supervision to or having legal custody of the child;

- by leave of the court, any other person or agency having a legitimate interest in the case;
- adult probation and criminal court staff, including the prosecutor and attorney for the defendant, for use in adult sentencing procedures; and
- the child's parent, except where parental rights have been terminated, or guardian, as well as the child's counsel and the child's guardian ad litem.

Though not specifically mentioned in the statute, law enforcement personnel and school officials could gain access under the generic category of persons or agencies having a legitimate interest in the case or the work of the court.

Juvenile law enforcement records also are confidential and inspection is permitted only to the following:

- a juvenile court;
- the Department of Pensions and Security, Department of Youth Services, public and non-governmental institutions, agencies to which child is committed, and those responsible for his supervision after release;
- by order of the court, those having a legitimate interest in the case or in the work of the law enforcement agency;
- law enforcement officers of other jurisdictions;
- adult probation and criminal court staff, adult parole boards and officials of adult penal institutions; and
- the parent, guardian, or other custodian and counsel for the child.

Alaska

AS Section 47.10.090

The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor may not be disclosed to anyone without the court's permission. A state or city law enforcement agency must disclose information regarding a case when needed by the person or agency making a preliminary investigation for the information of the court. The safest way to establish interagency sharing of records is by court order.

Arizona

A.R.S. Section 8.208

The juvenile court shall release, upon request of an adult probation department, all the information it has on a person convicted of a criminal offense for purposes of a pre-sentence investigation and report.

The juvenile court shall release to any prosecutor, law enforcement officer or a person's attorney, upon request, the records of juvenile arrests, referrals or complaints and subsequent dispositions concerning a person charged with a criminal offense. Upon request, the juvenile court also shall release all information in its possession to superior court agencies, departments, divisions or magistrates to assist in the determination of release from custody of a person charged with a criminal offense.

Arkansas

Ark. Stat. Section 45-441

Arkansas' Juvenile Code currently mandates that court findings be kept as the juvenile record and leaves the access and control of its records to the general provisions of the state Freedom of Information Act.

California

Welfare and Institutions Code, Sections 504, 827

Juvenile court records may be inspected by:

- court personnel;
- the minor who is the subject of the proceeding;
- the minor's parents or guardian;
- the attorneys for those parties;
- such other persons as may be designated by court order; and
- the district attorney and child protective agencies, only if access is necessary in connection with a criminal investigation.

Members of School Attendance and Review Boards also have access to juvenile records. Schools must be notified of drug offenses and serious acts of violence that have been adjudicated in court. The juvenile court judge can allow a participatory law enforcement agency to inspect juvenile court records, probation and protective services records, district attorney records, school records and law enforcement records to compile data on serious habitual offenders.

Colorado

C.R.S.A. Sections 19.1.118, 19.2.901

Records of court proceedings are open to inspection by:

- the child's parents or guardian;

- the child's attorneys;
- other parties in proceedings before the court; and
- any agency to which legal custody of the child has been transferred.

With the consent of the court, records of court proceedings may be inspected by:
- the child;
- persons having a legitimate interest in the proceedings; and
- persons conducting pertinent research studies.

The records of juvenile probation officers, and all other reports of social and clinical studies, are not open to inspection except by consent of the court.

The records of law enforcement officers concerning juveniles shall not be inspected by or disclosed to the public except:
- to the juvenile, his parent, guardian or legal custodian;
- to other law enforcement agencies that have a legitimate need for such information;
- to the victim in each case, after authorization by the district attorney;
- when the juvenile has escaped from an institution to which he has been committed;
- when the court orders that the juvenile be tried as an adult criminal;
- when there has been an adult criminal conviction and a pre-sentence investigation has been ordered by the court; and
- by order of the court.

Connecticut

C.S.G.A. Section 46b.124

All records of cases of juvenile matters, including studies and reports by probation officers, social agencies and clinics, are confidential and not open to inspection by any third party, including researchers commissioned by a state agency, except upon order of the superior court. However, such records shall be available to:
- the attorney representing the child;
- the child's parents or guardian;
- another court;
- victims may obtain information in order to sue the minor;
- any judge for consideration in sentencing if the juvenile has been convicted of a felony or in deciding whether or not to grant youthful offender status; and
- any adult probation officer.

Deleware

D.C.A. Title 10, Section 972

Juvenile records are available to the superior court and the Department of Services for Children, Youth and Their Families. The media can request that the names of children arrested for felonies be released.

District of Columbia

D.C. Code Sections 16.2331 to 16.2333

Juvenile case records are open to inspection by:

- judges and professional staff of the superior court;
- the corporation counsel and his assistants assigned to the division;
- the child, his parents or guardians, and their attorneys;
- any adult criminal court or its probation staff for sentencing purposes and the counsel for the defendant;
- public or private agencies or institutions providing supervision, treatment or custody of the child, if under order of the division;
- the U.S. Attorney for the District of Columbia and his assistants; and
- others having a professional interest in the protection, welfare, treatment and rehabilitation of the child or a member of his family, or in the work of the superior court, if authorized by rule or special order of the court.

Juvenile social records are open to inspection by:

- judges and professional staff of the superior court;
- the corporation counsel and his assistants assigned to the division;
- the attorney for the child;
- any adult court or its probation staff for purposes of sentencing the child as a defendant in a criminal case;
- public or private agencies or institutions providing supervision, treatment or having custody of the child, if under order of the division;
- others having a professional interest in the protection, welfare, treatment and rehabilitation of the respondent or of a member of his family, or in the work of the division, if authorized by rule or special order of the court; and
- employees of the Social Rehabilitation Administration of the Department of Human Resources, when necessary for the discharge of their official duties.

Law enforcement records are open to inspection by:

- the superior court having the child currently before it in any proceedings;
- the officers of public and private institutions or agencies to which the child currently is committed, and those professional persons or agencies responsi-

ble for his supervision after release;
- any person, agency or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department;
- law enforcement officers, when necessary for the discharge of their current official duties;
- a court in which a person is charged with a criminal offense for determining conditions of release or bail;
- a court in which a person is convicted of a criminal offense for purposes of a pre-sentence report or other dispositional proceeding, or by officials of penal institutions, or by a parole board;
- the parent, guardian, or other custodian and counsel for the child; and
- employees of the Social Rehabilitation Administration of the Department of Human Resources, when necessary for the discharge of their official duties.

Florida

West's F.S.A. Sections 39.12, 39.411

All official records required by the Juvenile Court Act are not open to inspection by the public. Records can be inspected only by court order by persons deemed by the court to have a proper interest. However, the following always have the right to inspect and copy any official record pertaining to the child:
- the child, his parents or legal custodians, and their attorneys;
- law enforcement agencies;
- the department and its designers;
- the Parole and Probation Commission; and
- the Department of Corrections.

The court may permit authorized representatives of recognized organizations compiling statistics to inspect official records.

Georgia

O.C.G.A. Sections 15-11-58, 15-11-59

All files and records of the court in a proceeding under this article are open to inspection only upon order of the court. The judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records.

With the consent of the court, inspection of the law enforcement records and files is permitted by:
- a juvenile court having the child before it in any proceeding;

- counsel for a party to the proceedings;
- officers of public institutions or agencies to which the child is committed;
- law enforcement officers of other jurisdictions, when necessary for the discharge of their official duties;
- the adult criminal court;
- officials of penal institutions to which the child is committed;
- a parole board; and
- authorized representatives of the Department of Human Resources and the Council of Juvenile Court Judges.

Hawaii

HRS Section 571.84

Records, other than social records, shall be open to inspection by:
- the parties and their attorneys;
- an institution or agency to which custody of a minor has been transferred;
- an individual who has been appointed guardian; and
- persons having a legitimate interest in the proceedings, with the consent of the judge.

Pursuant to an order of the court or rules of the court, such records also shall be open to inspection by:
- persons conducting pertinent research studies; and
- persons, institutions and agencies having a legitimate interest in the protection, welfare or treatment of the minor.

Reports of social and clinical studies or examinations made pursuant to this chapter shall be withheld from public inspection. However, information from such reports may be furnished, in a manner determined by the judge, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the minor.

Police records are available to those officially involved in family court matters or to others by court order.

Idaho

I.C. Sections 16.1811, 16.1816

Peace officer's records of children are not open to public inspection.

Juvenile court records are open to inspection by:

- the parties;
- their attorneys;
- an institution or agency to which custody of a child has been transferred;
- an individual who has been appointed guardian with consent of the court; and
- persons having a legitimate interest in the proceedings.

Pursuant to rule or special order of the court, juvenile court records also are open to inspection by:
- persons conducting pertinent research studies; and
- persons, institutions and agencies having a legitimate interest in the protection, welfare or treatment of the child.

The child's social records shall be withheld from public inspection, except that facts contained in such reports shall be furnished, upon request and in a manner determined by the court, to persons and governmental and private agencies and institutions conducting pertinent research studies or having a legitimate interest in the protection, welfare and treatment of the child.

Victims can have access to the names, addresses, and phone numbers of the child and his parents.

Illinois

Ill. Rev. Stat. Chapter 37, Sections 801-7, 801-8

Inspection and copying of law enforcement records is restricted to the following:
- local, state or federal law enforcement officers;
- prosecutors, probation officers and social workers;
- adult and juvenile prisoner review boards;
- authoried military personnel; and
- with permission, persons engaged in research.

Inspection and copying of juvenile court records is restricted to the following:
- the minor who is the subject of the record, his parents, guardian and counsel;
- law enforcement officers and law enforcement agencies;
- judges, prosecutors, probation officers and social workers;
- adult and juvenile prisoner review boards;
- authorized military personnel;
- victims;

- persons engaged in bona fide research; and
- the Secretary of State.

Indiana

West's A.I.C. Sections 31.6.8.1, 31.6.8.1.2

The records of the juvenile court are available to the following persons without an order of the court:

- the judge or any authorized staff member;
- any party and his attorney;
- the judge of a court having adult criminal jurisdiction;
- the prosecutor or any authorized staff member;
- the attorney for the county department or any authorized staff member of the county department, the state Department of Public Welfare, or the Department of Correction; and
- the parents of a child when the custody or support of that child is in issue.

The juvenile court may grant any person having a legitimate interest in the work of the court, or in a particular case, access to the court's legal records. The juvenile court shall grant any person providing services to the child or his family access to the records on the child or his family. Under certain conditions, the juvenile court shall grant any person involved in a legitimate research activity access to the court's confidential records. Under certain conditions, the juvenile court shall grant any party to a criminal or juvenile delinquency proceeding access to a person's legal records.

The juvenile court may grant the victim of a delinquent act, or a member of the victim's family, access to its legal records if the information may be used in a civil action against the child who committed the act, or against the child's parent.

Under certain conditions, some information contained in law enforcement records involving allegations that a child is a delinquent child is considered public information.

The records of a law enforcement agency are available to the following persons without specific permission from the head of the agency:

- a law enforcement officer acting within the scope of his lawful duties;
- the judge of the juvenile court or any authorized staff member;
- any party to a juvenile court proceeding and his attorney, with certain exceptions;
- the judge or staff member of any adult criminal court;
- the prosecutor or his staff; and
- the attorney for the county department or his staff.

The head of a law enforcement agency may grant any person having a legitimate interest in the work of the agency, or in a particular case, access to the agency's confidential records.

Under certain conditions and for certain reasons, the head of the law enforcement agency shall grant any party to a juvenile delinquency proceeding access to a person's records. If there is a probable cause, the head of the agency shall release the child's name to the victim if the victim requires the name in order to proceed with a civil action for damages.

Iowa

I.C.A. Section 232.147

Juvenile court records are confidential. Offical juvenile court records are public records, unless the public has been excluded from the hearing, and then disclosure is not permitted except pursuant to court order or unless otherwise provided in this chapter.

Official juvenile court records in all cases, except those alleging delinquency, may be inspected and their contents shall be disclosed to the following without a court order:

- the judge and professional court staff, including juvenile court officers;
- the child and the child's counsel;
- the child's parent, guardian or custodian, and guardian ad litem;
- the county attorney and his assistants;
- an agency that has custody of the child or is legally responsible for the care, treatment or supervision of the child;
- adult court and probation officers; and
- a foster care review committee.

Pursuant to a court order, official records may be inspected by a person conducting bona fide research and persons who have a direct interest in a proceeding or in the work of the court.

Inspection of social records is not permitted except pursuant to a court order or unless otherwise provided. Law enforcement records may be inspected without a court order by the following:

- peace officers of this state and other jurisdictions;
- the judge and professional court staff;
- the child and the child's counsel, parent, guardian, custodian and guardian ad litem;
- agencies responsible for the care, treatment or supervision of the child pursuant to a court order; and
- the adult criminal court.

Pursuant to a court order, such records may be inspected by, and their contents may be disclosed to:

- a person conducting research, provided that no personal identifying data shall be disclosed; and
- persons who have a direct interest in a proceeding or in the work of the court.

Kansas

K.S.A. Sections 38.1607, 38.1608

The official file of any juvenile age 16 or over at the time the act is alleged to have been committed is open to public inspection. The official file of anyone under 16 may be disclosed to:

- a judge or the court staff;
- parties to the proceeding and their attorneys;
- a public or private agency or institution having custody of the juvenile under court order;
- law enforcement officers or county or district attorneys; and
- any other person authorized by court order.

Social files are privileged and open to inspection only by attorneys or upon order of the judge.

Law enforcement records are available to:

- the judge and members of the court staff;
- parties to the proceedings and their attorneys;
- the Department of Social and Rehabilitation Services or the officers of public institutions or agencies to which the juvenile is committed;
- law enforcement officers or county or district attorneys;
- the central repository; and
- any other person when authorized by a court order.

Kentucky

KRS Chapters 610.320, 610.340

No record of the action of a probation officer shall be made public except by leave of the district judge. Such information can be communicated to:

- the court;
- his colleagues or supervisors in his own department;
- another probation officer; and
- a representative of any public or private social agency, institution, hospital

or church having a direct interest in the child's record or social history.

Police records shall be made available to:
- the child;
- his family;
- his guardian;
- his legal representative;
- the court;
- probation officers;
- representatives of the cabinet; and
- representatives of any public or private agency, institution, hospital or church having a direct interest in the record or social history of the child.

All juvenile court records are confidential and not to be disclosed except to the child or parent unless ordered by the court for good cause. This does not apply to public officers or employees engaged in the prosecution of a case.

Louisiana

C.J.P. Articles 122, 123

All records of the juvenile court, probation officers and law enforcement agencies are confidential and shall not be disclosed except for the following:
- statistical information and information of a general nature; and
- reports and records containing the disposition of cases of traffic violations.

Reports and records concerning proceedings in the juvenile court may be released to:
- a peace officer;
- a probation officer;
- the district attorney;
- an employee of the Division of Children, Youth and Family Services; and
- the Office of Juvenile Services.

For good cause, the court may order disclosure of records and reports of the court, probation officers and law enforcement agencies to any person, agency, institution or other court if the information is relevant to a specific investigation or proceeding.

The records of arrests, convictions or adjudications of any child who meets the following conditions may be released:
- anyone previously adjudicated a delinquent and who is subsequently arrested or charged with any crime or delinquent act; or

- any child adjudicated a delinquent for committing a delinquent act that if committed by an adult would be a felony, a misdemeanor against the person, or a misdemeanor involving a dangerous weapon.

Maine

M.R.S.A. Title 15, Section 3308

No person may inspect the records of juvenile proceedings except as provided in this section. For a hearing open to the general public, the petition, the record of the hearing and the order of adjudication shall be open to public inspection.

Records of court proceedings are open to inspection by:

- the juvenile;
- his parents, guardian or legal custodian;
- his attorney;
- the prosecuting attorney; and
- any agency to which legal custody of the juvenile was transferred.

The name of the juvenile shall be made known by the juvenile court to the victim of the juvenile crime upon the victim's request.

With the consent of the court, records of court proceedings — excluding names — may be inspected by persons having a legitimate interest in the proceedings or by persons conducting pertinent research studies.

Police records, juvenile caseworkers' records, probation officers' records, and all other reports of social and clinical studies are not open to inspection except with consent of the court or unless such records, reports or studies were made a part of the record of a hearing that was open to the general public.

Maryland

C.J. Sections 3.828

A police record and a juvenile court record concerning a child is confidential and its contents may not be divulged except by order of the court.

Juvenile delinquency records may be accessed and used by:

- parole and probation employees;
- the Division of Corrections; and
- those doing criminal justice research.

Such records may not contain names or other identifying information.

Massachusetts

M.G.L.A. Chapter 119, Section 60A

Juvenile court delinquency records are open to the child and his parents, guardian and attorney. All other situations require the consent of the court.

Michigan

M.C.L.A. 712A.28

Juvenile court and probation records of delinquency, abuse, neglect and status offenses are open only by court order to persons having a legitimate interest.

Minnesota

M.S.A. Section 260.161

The juvenile court shall release the records on delinquent adjudication to a requesting adult court for purposes of sentencing.

None of the records of the juvenile court, including legal records, shall be open to public inspection.

In juvenile court proceedings, any report or social history furnished to the court shall be open to inspection by the attorneys of record a reasonable time before it is used in connection with any proceeding before the court.

Peace officer's records of children shall not be open to public inspection or their contents disclosed to the public except by order of the juvenile court.

Mississippi

Mississippi Code Ann. Section 43.21.261

Records involving children shall not be disclosed, other than to necessary staff of the youth court, except pursuant to court order and then only to the following persons:

- the judge of another youth court or another youth court staff;
- the court of the parties in a child custody or adoption case in another court;
- the judge of any other court or members of another court staff, upon written consent of the child;
- representatives of a public or private agency providing supervision or having custody of the child under order of the youth court; and
- any person engaged in bona fide research, provided that no information identifying the subject of the records shall be made available to the re-

searcher unless it is absolutely essential to the research purpose and the judge gives prior approval.

Upon request, the following shall have the right to inspect any record, report or investigation that is to be considered by the youth court at a hearing:

- the child who is the subject of a youth court case has the right to inspect and copy any record, report or investigation that is filed with the youth court; and
- the youth court prosecutor has the right to inspect any law enforcement record involving children.

Missouri

V.A.M.S Section 211.321

Juvenile court records and social records are not open to inspection to persons having a legitimate interest except by order of the court, unless the child is charged with a serious offense. Certain serious violations for which the juvenile has been adjudicated a delinquent are available to the probation officer.

Peace officer's records, if any are kept, are not open to inspection except by order of the court.

Information and data may be released to persons and organizations authorized by law to compile statistics relating to juveniles. The court shall adopt procedures to protect the confidentiality of children's names and identities.

Montana

Mont. Rev. Code Ann. Sections 41.5.601, 41.5.603

If a felony petition is filed against a youth, there is no confidentiality. Other juvenile proceedings are confidential.

Youth court records — including social, medical and psychological records, as well as reports of preliminary inquiries, predispositional studies and supervision records of probations — are open to inspection only to the following:

- the youth court and its professional staff;
- representatives of any agency providing supervision and having legal custody of a youth;
- any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- any court and its probation and other professional staff or the attorney for a convicted party;
- the county attorney; and

- the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

Nebraska

Neb. Rev. Stat. Sections 43.2,108

With certain exceptions, the medical, psychological, psychiatric, and social welfare reports and records of juvenile probation officers are not open to inspection without a court order. Such records shall be made available to:

- a state district court or U.S. District Court of the United States upon the order of the judge; and
- a county court or separate juvenile court upon request.

Access to all confidential record information shall be granted as follows:

- the court of jurisdiction may, subject to applicable federal and state regulations, disseminate confidential record information to any individual, public or private agency, institution, or facility or clinic that is providing services to the juvenile or his family;
- the court of jurisdiction may disseminate confidential record information, with the consent of persons who are subjects of such information, or by order of the court, to any law enforcement agency; and
- the court of jurisdiction may disseminate such confidential record information to any court that has jurisdiction of the juvenile who is the subject of such information.

Such confidential record information may be disseminated between any:

- individual;
- public or private agency;
- institute;
- facility; and
- clinic.

However, such information shall not be disseminated further without order of the court.

Nevada

Nev. Rev. Stat. Section 62.360

Juvenile court records are open to inspection by court order to persons having a legitimate interest. However, release without a court order may be made of

any of the following:
- records of traffic violations that are being forwarded to the Department of Motor Vehicles and Public Safety; and
- records that have not been sealed and are required by the Department of Parole and Probation for preparation of pre-sentence reports.

Victims may petition the court to obtain information in order to sue the minor.

New Hampshire

N.H.R.S.A. Sections 169.B:24, 169.B:35, 169.B:39

In delinquency cases, unless the child is transferred to adult court or when the child is put on probation, all delinquency records shall be kept so that no one shall have access except:
- officers of the institution where the minor is committed;
- the juvenile services officer;
- the child's parent, guardian or custodian;
- the minor's attorney; and
- others entrusted with the corrective treatment of the minor.

Status offender records shall be kept so that no one has access except:
- juvenile services officers;
- others entrusted with the supervision of the child;
- the child;
- the child's parent, guardian or custodian; and
- the child's attorney.

Additional access to both delinquency and status offender records may be granted by court order or upon written consent of the child.

New Jersey

N.J.S.A. Sections 2A.4A.60

Access to all records, including social, medical, psychological, legal, probation and law enforcement records regarding delinquent or juvenile family crisis incidents, is available to:
- any court or probation department;
- the attorney general or county prosecutor;
- the parents, guardian or attorney of the juvenile;

- the Division of Youth and Family Services, if providing care or custody of the juvenile;
- the committing institution; and,
- with a court order showing good cause, any person or agency interested in the case or in the work of the agency keeping the records. There is a presumption for disclosure when the offense is serious.

Law enforcement may disclose its records to any law enforcement agency in New Jersey and may receive court information about the charges, adjudication and disposition of the juvenile's case.

The identity of the juvenile, the offense charged, the adjudication and disposition is disclosed to victims, law enforcement and the school principal to use in planning education and development programs for the minor.

New Mexico

N.M. Stat. Ann. Section 32.1.44

Records concerning status offenders or abused or neglected children, including social records, diagnostic evaluations and psychiatric reports, are confidential and closed to the public.

Delinquency records, including all social records, diagnostic evaluations, psychiatric and medical reports, social studies reports, pre-parole reports and supervision histories are privileged and shall not be disclosed to the public.

All records described above only are open to inspection by:

- court personnel;
- Human Services Department personnel;
- the local Substitute Care Review Board;
- Corrections Department personnel;
- law enforcement officials; and
- any other person or entity, by order of the court, having a legitimate interest in the case or work of the court.

New York

Family Court Act Section 166

The court may permit the inspection of any papers or records of the family court by anyone. In making this decision, the court would look at who was making the request, what they wanted the information for, and whether the information would be properly used if disclosed. The court must release the probation report to the child's counsel and the counsel for the petitioner.

North Carolina

N.C. Gen. Stat. 7A.675

Juvenile court records are withheld from public inspection and may be examined only by order of the judge, except that the following have the right to examine the juvenile's record:

- the juvenile;
- his parent, guardian or custodian; and
- any other authorized representative of the juvenile.

Law enforcement records and files are open only to the inspection of:

- the prosecutor;
- court counselors;
- the juvenile; and
- his parent, guardian or custodian.

North Dakota

N.D. Cent. Code Sections 27.20.51, 27.20.52

All files and records of the court may not be disclosed to the public and only are open to inspection by:

- the judge, officers and professional staff of the court;
- the parties to the proceedings and their counsel and representatives;
- a public or private agency or institution providing supervision or having custody of the child; and
- a court, its probation officers, professional staff and the attorney for the defendant.

With leave of the court, such files and records may be inspected by:

- any other person, agency or institution having a legitimate interest in the proceeding or the work of the court; and
- the principal of any public or private high school.

For certain motor vehicle violations, the court shall report the findings to the state highway commissioner. Though generally private, law enforcement records concerning a child can be inspected by:

- a juvenile court;
- counsel for a party to the proceeding;
- officers of public institutions or agencies to which the child is committed;
- law enforcement officers of other jurisdictions; and
- the adult criminal court.

Ohio

Ohio Rev. Code Ann. Sections 2151.14, 2151.18

The official juvenile court record may be inspected by the juvenile's parents or counsel. The reports and records of the Probation Department are confidential and not to be made public.

Oklahoma

10 Okl. St. Ann. Section 1125

Juvenile court records are open to public inspection only by order of the court to persons having a legitimate interest therein.

Oregon

Ore. Rev. Stat. Section 419.567

The record of the case shall be withheld from public inspection but shall be open to inspection by:

- the child;
- his parent, guardian or surrogate; and
- his attorney.

Reports and other material relating to the child's history and prognosis are not to be disclosed, except at the request of the child. However, such reports may be inspected by:

- the judge of the juvenile court;
- those acting under the judge's direction;
- the attorneys of record for the child; and
- the child's parent, guardian or custodian.

Others can obtain this information with the consent of the court.

Pennsylvania

42 Pa. C.S.A. Sections 6307, 6308

All juvenile court files and records may be inspected only by the following:

- the judges, officers and professional staff of the court;
- the parties to the proceeding, their counsel and representatives;
- a public or private agency or institution providing supervision or having

custody of the child;
- adult criminal courts for use in pre-sentencing investigation; and
- the Administrative Office of Pennsylvania Courts.

With leave of the court, any other person, agency or institution having a legitimate interest in the proceedings or the judicial system can inspect the files and records of the court.

Law enforcement records and files can be inspected by:
- the court having the child before it;
- counsel for a party to the proceeding;
- the officers of institutions or agencies to which the child is committed;
- law enforcement officers of other jurisdictions; and
- adult criminal courts for use in pre-sentencing investigations.

Law enforcement records are open to the public if the child is 14 or older and has been adjudicated delinquent for a serious violent or property crime.

Rhode Island

R.I. Gen. Laws Ann. 14.1.59, 14.1.64, 14.1.66

All institutions or agencies to which the court sends any child are required to give to the court information concerning any child as the court may require.

The victim of the crime can get access to the child's name for the purpose of filing a civil suit.

The records of delinquent children or status offenders are available only by court order. Juvenile police records are open to inspection by written order of the court when good cause has been shown by:
- the juvenile's parents;
- the juvenile's guardian;
- the juvenile's attorney; and
- those in loco parentis to the juvenile.

South Carolina

S.C. Code Ann. Sections 20.7.600

Peace officer's records of children shall be kept separate from records of adults and shall not be open to public inspection, except by such governmental agencies as authorized by the judge. The official juvenile records of the courts are open to inspection only by consent of the judge to persons having a legitimate interest. Such records always must be available to the juvenile's legal counsel.

South Dakota

S.D.C.L. Sections 26.8.19.5, 26.8.33

Law enforcement records may not be inspected except:
- by order of the court;
- when the court orders the child held for criminal proceedings; and
- for a pre-sentence investigation for probation in adult court.

Records of juvenile court proceedings are open to inspection by:
- the juvenile's parents or guardian;
- the attorneys;
- other interested parties in proceedings before the court; and
- any agency to which custody of the child has been transferred.

With the court's consent, records of court proceedings may be inspected by:
- the child;
- persons having a legitimate interest in the proceedings; and
- persons conducting pertinent research.

Probation officer's records and reports of social and clinical studies used by the court in dispositional hearings are not open to inspection, except by consent of the court.

Tennessee

Tenn. Code Ann. Sections 37.1.153, 37.1.154

Files and records of the juvenile court are open only to:
- the judge;
- officers of the court;
- professional court staff;
- the parties and their counsel;
- agencies providing court-ordered supervision; and
- those writing adult pre-sentence reports.

Others with a legitimate interest in the proceedings or work of the court need court permission to gain access. The juvenile court judge also can order release of the records of inmates in the Department of Corrections.

Law enforcement records are open to the juvenile court, counsel for the parties, commitment agencies, parole boards or institutions, and law enforcement officers of other jurisdictions for official purposes and adult court pre-sentence reports.

Texas

V.T.C.A. Fam. Code Sections 3.51.14

Juvenile court and prosecutor's files are open to the judge, probation officers, court staff and attorneys for the parties, as well as to agencies with court-ordered supervision of the child and others having legitimate interest in the proceeding or work of the court if they have obtained leave of the court. Agencies and institutions that supervise or have court-ordered custody of children must open their files to the judge and probation officers with a legitimate interest in the work of the agency or institution with leave of the juvenile court.

Law enforcement records may be inspected by the court, attorneys for the parties and other law enforcement officers for official purposes. The court could make orders allowing further dissemination at its discretion.

Utah

Utah Code Ann. Sections 78.3a.55, 78.3a.58

Court and probation records are open to the child's parents or guardian, the parties and their attorneys, and agencies that have custody of the child. Others who need consent of the judge include the child, researchers and persons having a legitimate interest in the proceedings. Social and clinical studies are open to inspection only by consent of the court.

Vermont

Vt. Stat. Ann. Title 33, Section 663

Unless a delinquent child is transferred to adult criminal court or the court otherwise orders in the interest of the child, law enforcement records and files shall not be open to public inspection nor their contents disclosed to the public. If the child is found delinquent by reason of a delinquent act that would have been a felony if committed by an adult, the court, upon request of the victim, shall make the child's name available to the victim.

Inspection of law enforcement records and files is open to the following:

- a juvenile court having the child before it;
- the officers of public institutions or agencies to which the child is committed as a delinquent;
- the adult criminal court;
- the state's attorneys; and
- other law enforcement officers.

Virginia

Va. Code Ann. Sections 16.1.300, 16.1.301, 16.1.305, 16.1.309.1

The social, medical, psychiatric, and psychological reports and records of children who are committed to the Department of Corrections are confidential and open for inspection only to the following:

- the judge, prosecuting attorney, probation officers and professional staff of the juvenile court;
- any public agency, child welfare agency and private organization, facility or person treating the child;
- the child's parent, guardian, legal custodian, person standing in loco parentis and the child's attorney;
- any person who previously has been a ward of the department and who has reached the age of majority;
- any state agency providing funds to the Department of Corrections;
- any other person, agency or institution, by order of the court, having a legitimate interest in the case or the work of the court;
- any outside person, agency or institution conducting research; and
- those treating a former ward, with the signed consent of the ward or his parent or legal representative.

Inspection of law enforcement records is permitted by:

- a court having the child currently before it;
- officers of institutions to which the child is committed;
- any other person, agency or institution, by order of the court, having a legitimate interest in the case or the work of the law enforcement agency;
- by order of the court, law enforcement officers of other jurisdictions;
- probation and other professional staff of the adult court;
- officials of penal facilities; and
- the child and his parent, guardian or other custodian, and counsel for the child, by order of the court.

Juvenile court records are open to inspection by:

- the judge, probation officers and professional staff of the court;
- representatives of a public or private agency or department providing supervision or having legal custody of the child;
- the attorney for the party;
- adult probation and parole officers; and
- any other person, agency or institution, by order of the court, having a legitimate interest in the case or the work of the court.

Law enforcement records can be disclosed if the juvenile is transferred to

adult court or if it is in the interest of national security. If a child is found guilty of a serious felony in juvenile court, the judge may make the juvenile's name, address and nature of the offense public.

Washington

R.C.W. Sections 13.50.010 to 13.50.100

The official court file is open to the public. The social file and other information regarding juvenile offenses contained in the records of the police, court, prosecutor, defense attorney, detention center, attorney general, social and health services, or others who have custody of children are available to these same juvenile justice or care agenices listed above when they are investigating or supervising the juvenile in question. Others seeking access to these files must obtain court permission by making a motion to the court for an order allowing inspection of the records.

West Virginia

14 W. Va. Code Ann. Section 49.5.17

Juvenile records and law enforcement records shall not be disclosed or made available for inspection, except that the court may, by written order pursuant to a written petition, permit disclosure or inspection to:

- a court having juvenile jurisdiction;
- the adult criminal court;
- the child or counsel for the child when they request disclosure or inspection of such records;
- the officials of public institutions to which a child is committed; and
- a person doing research, provided identifying information is left out.

Wisconsin

W.S.A. Sections 48.396, 48.293, 48.35, 48.38

Juvenile court records are available only by court order. The court can disclose findings and disposition information to qualified persons if the disclosure would be in the best interest of the child or in the administration of justice.

Peace officer's records are available upon request to the prosecutor, officials of the school attended by the child, and other law enforcement or social welfare agencies to allow for the confidential exchange of information. The

prosecutor gives law enforcement reports to the child's counsel or guardian ad litem as part of the discovery process.

Wyoming

Wyo. Stat. Ann. Sections 14.6.239, 14.6.240

Juvenile court records are sealed at the completion of the proceedings. The court shall not release these records unless there has been an adjudication of delinquency and only to the extent necessary to meet the following inquiries:

- from another court;
- from an agency preparing a pre-sentence report for another court;
- from a party to the proceeding; and
- upon request, the court may release to the victim a report of the final disposition of the proceedings.

Law enforcement records of a child are not open to public inspection without written consent of the court.

Appendix A: Use of State Statute Tables

The following tables list those agencies or persons specifically allowed access to juvenile court records by the words of the statute. Juvenile court records — both legal and social — generally are confidential information. However, as found in state juvenile codes, certain groups can gain access to such records. Access is not unlimited or automatic — in many cases, for example, a court order is required. A careful reading of the statutes listed in the analysis section should explain how to gain the needed records.

Statutes that allow access to those "with a legitimate interest" or "official interest" in the case proceeding or work of the court allow interagency child-serving groups to share records easily. Some statutes allow those with legitimate or official interests to have automatic access to the records. Others require the court to examine their interests and find that they are "legitimate" or "official" before the records are released by court order. Law enforcement, schools, social services, prosecutors and other agencies providing services to juveniles arguably would be among those with legitimate or official interests.

In addition, included in the tables is other information about the juvenile court relating to public access or the juvenile's right to a jury trial.

Reference to these tables provides the quick answer. Reference to the cited statutes provides the full answer.

Statutory Access to Juvenile Court Records

	Child Who is the Subject of the Proceedings	Child's Attorney	Parent or Guardian
AL	—	12.15.100	12.15.100
AK	—	—	—
AZ	—	—	—
AR	—	—	—
CA	WI.827	WI.827	WI.827
CO	19.1.118, 19.2.901	19.1.118, 19.2.901	19.1.118, 19.2.901
CT	—	46b.124	46b.124
DE	—	—	—
DC	16.2331, 16.2332, 16.2333	16.2331, 16.2332, 16.2333	16.2331, 16.2332, 16.2333
FL	39.12	39.12	39.12
GA	—	—	—
HI	571.84	571.84	571.84
ID	16.1816	16.1816	16.1816
IL	37.801.7, 37.801.8	37.801.7, 37.801.8	37.801.7, 37.801.8
IN	31.6.8.1	31.6.8.1	31.6.8.1
IA	232.147	232.147	232.147
KS	38.1607, 38.1608	38.1607, 38.1608	—
KY	610.320, 610.340	610.320, 610.340	—
LA	—	—	—
ME	15.3308	15.3308	15.3308
MD	—	—	—
MA	119.60A	119.60A	119.60A
MI	—	—	—
MN	—	—	—
MS	43.21.261	—	—
MO	—	—	—
MT	41.5.603	41.5.603	—
NE	—	—	—
NV	—	—	—
NH	—	169.B.35	169.B.35
NJ	—	2A.4A.60	2A.4A.60
NM	—	—	—
NY	FCA.166	FCA.166	FCA.166
NC	7A.675	7A.675	7A.675
ND	27.20.51	27.20.51	—
OH	—	2151.14, 2151.18	2151.14, 2151.18
OK	—	—	—
OR	419.567	419.567	419.567
PA	42.6307	42.6307	—
RI	—	—	—
SC	—	20.7.600	—
SD	—	26.8.33	26.8.33
TN	37.1.153	37.1.153	37.1.153
TX	—	FC.3.51.14	—
UT	78.3a.55	78.3a.55	78.3a.55
VT	—	—	—
VA	—	—	16.1.305
WA	13.50.050	13.50.050	13.50.050
WV	49.5.17	49.5.17	—
WI	—	—	—
WY	14.6.239	—	—

	Judge and Professional Staff	Probation Officers	State's Attorney
AL	12.15.100	12.15.100	12.15.100
AK	—	—	—
AZ	—	8.208	8.208
AR	—	—	—
CA	WI.827	—	WI.827
CO	—	—	19.1.118, 19.2.901
CT	46b.124	46b.124	—
DE	—	—	—
DC	16.2331, 16.2332, 16.2333	16.2331, 16.2332, 16.2333	16.2331, 16.2332, 16.2333
FL	—	39.12	—
GA	—	—	—
HI	—	—	571.84
ID	—	—	16.1816
IL	37.801.7, 37.801.8	37.801.7, 37.801.8	37.801.7, 37.801.8
IN	31.6.8.1	—	31.6.8.1
IA	232.147	232.147	232.147
KS	38.1607, 38.1608	—	38.1608
KY	—	—	—
LA	—	CJP.ART.122	CJP.ART.122
ME	—	—	15.3308
MD	—	3.828	—
MA	—	—	—
MI	—	—	—
MN	—	—	—
MS	43.21.261	—	—
MO	—	—	—
MT	41.5.603	41.5.603	41.5.603
NE	43.2,108	43.2,108	—
NV	—	62.360	—
NH	—	169.B.35	—
NJ	—	2A.4A.60	2A.4A60
NM	32.1.44	—	—
NY	FCA.166	FCA.166	FCA.166
NC	—	—	—
ND	27.20.51	27.20.51	27.20.51
OH	—	—	—
OK	—	—	—
OR	—	—	—
PA	42.6307	42.6307	42.6307
RI	—	—	—
SC	—	—	—
SD	—	—	26.8.33
TN	37.1.153	37.1.153	37.1.153
TX	FC.3.51.14	FC.3.51.14	FC.3.51.14
UT	—	—	78.3a.55
VT	—	—	—
VA	16.1.305	16.1.305	—
WA	13.50.050	13.50.050	13.50.050
WV	—	—	—
WI	—	—	—
WY	—	—	—

	Institutions or Agencies with Custody	Law Enforcement Agencies	Criminal Courts
AL	12.15.100	—	12.15.100
AK	—	—	—
AZ	—	—	—
AR	—	—	—
CA	—	—	—
CO	19.1.118, 19.2.901	—	—
CT	—	—	46b.124
DE	10.972	—	10.972
DC	16.2331, 16.2332, 16.2333	—	16.2331, 16.2332, 16.2333
FL	39.12	39.12	—
GA	—	—	—
HI	571.84	—	—
ID	16.1816	—	—
IL	—	37.801.7, 37.801.8	—
IN	—	31.6.8.1	31.6.8.1
IA	232.147	—	232.147
KS	38.1607, 38.1608	38.1608	—
KY	—	—	—
LA	CJP.ART.122	—	—
ME	15.3308	—	—
MD	3.828	—	—
MA	—	—	—
MI	—	—	—
MN	—	—	260.161
MS	43.21.261	—	—
MO	—	—	—
MT	41.5.603	41.5.603	41.5.603
NE	43.2,108	43.2,108	43.2,108
NV	—	—	—
NH	169.B.35	—	—
NJ	2A.4A.60	—	2A.4A.60
NM	32.1.44	32.1.44	—
NY	FCA.166	FCA.166	FCA.166
NC	—	—	—
ND	27.20.51	—	27.20.51
OH	—	—	—
OK	—	—	—
OR	—	—	—
PA	42.6307	—	42.6307
RI	—	—	—
SC	—	—	—
SD	26.8.33	—	—
TN	37.1.153	—	—
TX	FC.3.51.14	—	—
UT	78.3a.55	—	—
VT	—	—	—
VA	16.1.305	—	—
WA	13.50.050	13.50.050	13.50.050
WV	49.5.17	—	49.5.17
WI	—	—	—
WY	—	—	14.6.239

	Victim of the Crime	Military Personnel	School Officials	Persons Having a Legitimate Interest
AL	—	—	—	12.15.100
AK	—	—	—	47.10.090
AZ	—	—	—	—
AR	—	—	—	—
CA	—	—	—	—
CO	—	—	—	19.1.118, 19.2.901
CT	46b.124	—	—	—
DE	—	—	—	—
DC	—	—	—	16.2331, 16.2332, 16.2333
FL	—	—	—	39.12
GA	—	—	—	15.11.58
HI	—	—	—	571.84
ID	—	—	—	16.1816
IL	37.801.7, 37.801.8	37.801.7, 37.801.8	—	37.801.7, 37.801.8
IN	—	—	—	31.6.8.1
IA	—	—	—	232.147
KS	—	—	—	38.1607, 38.1608
KY	—	—	—	—
LA	—	—	—	—
ME	15.3308	—	—	15.3308
MD	—	—	—	3.828
MA	—	—	—	—
MI	—	—	—	712A.28
MN	—	—	—	—
MS	—	—	—	43.21.261
MO	—	—	—	211.321
MT	41.5.601	—	—	41.5.603
NE	—	—	—	—
NV	62.360	—	—	62.360
NH	—	—	—	—
NJ	—	—	—	2A.4A.60
NM	—	—	—	32.1.44
NY	FCA.166	FCA.166	FCA.166	FCA.166
NC	—	—	—	—
ND	—	—	27.20.51	27.20.51
OH	—	—	—	—
OK	—	—	—	10.1125
OR	—	—	—	—
PA	—	—	—	42.6307
RI	—	—	—	—
SC	—	—	—	20.7.600
SD	—	—	—	26.8.33
TN	—	—	—	37.1.153
TX	—	—	—	FC.3.51.14
UT	—	—	—	78.3a.55
VT	33.663	—	—	—
VA	—	—	—	16.1.305
WA	13.50.050	13.50.050	13.50.050	13.50.050
WV	—	—	—	49.5.17
WI	—	—	—	—
WY	14.6.239	—	—	—

Juvenile's Right to a Jury Trial — Open or Closed Court

	Cite	Jury Trial	Open Court
AL	12.15.65	N[1]	N
AK	47.10.070	Y	N
AZ	(Not in statutes)	N	
AR	45.407, 45.442	N[1]	Discretionary[7]
CA	Welfare & Institutions Code 346, 702.3	N[1]	N[6]
CO	19.1.105, 19.1.106, 19.2.804	Y[2]	Y
CT	(Not in statutes)	N	
DE	10.972	N	Y[3]
DC	16.2316, 16.2327	N[1]	Y[3]
FL	39.09, 39.408, 39.44, 39.467	N[1]	Discretionary[7]
GA	15.11.28	N[1]	N
HI	571.41	N[1]	N
ID	16.1806A	Y[2]	
IL	37.701.5, 37.705.35	Y[2]	N
IN	(Not in statutes)	N	
IA	232.39	N	N[6]
KS	38.1652, 38.1656	Y[2]	Y[4]
KY	610.010, 610.070	Y	N
LA	CJP.ART.14, CJP.ART.69, CJP.ART.72	N[1]	Y[5]
ME	15.3307, 15.3310	N[1]	Y[3]
MD	3.812	N[1]	N
MA	18.119.39E, 18.119.55A, 18.119.391, 188.119.65	Y	N
MI	712A.17	Y	N
MN	260.155	N[1]	Y[3]
MS	43.21.203	N[1]	N
MO	211.171	N	N
MT	41.5.206, 41.5.521, 41.5.533	Y[2]	Y[3]
NE	43.279	N[1]	
NV	5.62.193	N[1]	N
NH	169.B.34	N	N
NJ	2A.4A.40, 2A.4A.60	N[1]	Discretionary[7]
NM	32.1.29, 32.1.30, 32.1.31, 32.1.43	Y[2]	Y[5]
NY	(Not in statutes)	N	N
NC	7A.629, 7A.631	N[1]	N[6]
ND	27.20.24	N[1]	N
OH	2151.35	N[1]	N
OK	10.51.1110, 10.51.1111	Y[2]	N[6]
OR	419.498	N[1]	
PA	42.6336	N[1]	N
RI	14.1.30	N	N
SC	20.7.755	N[1]	N
SD	26.8.31, 26.8.32	Y[2]	Y[5]
TN	37.1.124	N[1]	N
TX	FC.3.51.045, FC.3.53.05, FC.3.54.01 to FC.3.54.05, FC.3.54.08	Y[2]	N
UT	78.3a.33	N[1]	N
VT	33.651	N[1]	Y[3]
VA	16.1.272, 16.1.296, 16.1.302	Y[2]	Y[5]
WA	13.04.021, 13.34.110, 13.40.140	N[1]	Y[5]
WV	49.5.1, 49.5.6, 49.5.9	Y[2]	N
WI	48.18, 48.237, 48.243, 48.299	Y	N[6]
WY	14.6.209, 14.6.223, 14.6.224, 14.6.232, 14.6.237	Y	N

1. Statute specifically states there is no right to a jury trial for some or all types of hearings.
2. Statute permits a limited right to a jury trial under certain circumstances.
3. Only for proceedings held on certain types of offenses, generally an offense that would be punishable as a felony if the youth were an adult.
4. Age restriction.
5. Exceptions.
6. Unless requested by one of the parties, e.g., parent, minor, judge.
7. Hearing open or closed at the discretion of the court.

Appendix B: Model Juvenile Records Code

The juvenile justice system in the United States is approaching 90 years of age. In the past 20 to 25 years, the juvenile system has undergone numerous revisions that have made it more like the adult system. This chapter suggests that another change is necessary if the juvenile system is to operate efficiently.

The juvenile justice system began with the idea that the juvenile is not responsible for his actions. The judge was to play the part of the child's parent, and his goals were to provide treatment and rehabilitation. The system was designed to protect all children — even those committing illegal acts.

Both the juvenile court proceedings and the records of the proceedings were confidential. This kept the public from hearing which juvenile committed crimes and thereby prevented the child from being branded with the scarlet letter of delinquency.

It did not matter that the proceedings were kept secret in a time when the crimes committed by juveniles predominantly were of a minor nature. But as even a casual observer today knows, the number of serious and violent crimes committed by juveniles is increasing daily. Anyone watching the nightly news or reading the daily newspaper is bombarded by stories of gang violence and serious criminal behavior by today's youth.

The problem with most juvenile records statutes is not that the public does not have knowledge of the acts of these youths, but often the people who run the juvenile justice system — the judges, the police officers, the probation officers — do not have full knowledge of the backgrounds of the minors about which they must make decisions.

Because this information is not available, children enter the juvenile court system as first-time offenders when they actually may have committed numerous offenses. Older juveniles also enter the adult system as first-time offenders when they actually may have committed many offenses as juveniles. Even more common is the offender with major educational, psychological or social problems who does not receive the most appropriate treatment program because the court was not provided with the appropriate records.

The following Model Statute would give those in the juvenile justice system the information they need while still keeping juvenile records confidential from the public in most cases.

Model Statute

A. The following records are confidential and shall not be released to the public except as permitted by this statute.
   1. Juvenile court records, which include both legal and social records;
   2. Juvenile social service agency, child protective service agency or multidisciplinary team records whether contained in court files or in agency files, which includes all records made by any public or private agency or institution that has or has had the child under its care, custody or supervision;
   3. Juvenile probation agency records whether contained in court files or in probation agency files;
   4. Juvenile parole agency records whether contained in court files or in parole agency files;
   5. Juvenile prosecutor, state's attorney, district attorney or county attorney records relating to juvenile cases;
   6. Juvenile law enforcement agency records, including fingerprints and photographs; and
   7. School records maintained by school employees on all students, including, but not limited to, academic, attendance, behavior and discipline records.

B. Access to the records listed in Section A is permitted without court order for official use to the following:
   1. All courts;
   2. All probation or parole agencies;
   3. All attorneys general, prosecutors, state's attorneys, district attorneys and county attorneys;
   4. All social service or protective service agencies or multidisciplinary teams;
   5. All law enforcement agencies;
   6. All schools attended by the minor; and
   7. All persons, agencies or institutions that have responsibility for the custody, care, control or treatment of the minor.

C. The juvenile court may issue an order releasing juvenile records to any person, agency or institution asserting a legitimate interest in the case or in the proceedings of the juvenile system.

D. Juvenile records may be sent to a central repository, which may be computerized. The central repository may be accessed by all agencies and organizations listed in section B above.

E. The juvenile, the juvenile's parents or guardian, and the juvenile's attorney may have access to the legal records maintained on the juvenile in possession of the juvenile court without court order. The juvenile's attorney may have access to the social records maintained on the juvenile in possession of the juvenile court and to the records listed in Section A of this statute for use in representation of the juvenile. The juvenile about whom records are maintained may petition the court to correct any information that is incorrect.

Note: Other Disclosures of Juvenile Records

Several states in recent years have modified their juvenile records statutes to allow public disclosure of records involving serious crimes. Typically, such statutes allow the public to have access to records regarding felony crimes committed by minors who have reached age 15 or 16. Many states also allow victims to obtain information about juvenile records in order to pursue civil remedies.

Such clauses are extremely important and should strongly be considered by those re-drafting their state juvenile records statutes. However, those clauses were purposely left out of this Model Statute because the model focuses only on child-serving agencies sharing records with each other in order to make better professional decisions about children — not on the wider issue of records access by the general public.

Appendix C: Model FERPA Legislation

The National School Safety Center offers these recommendations to revise FERPA (Family Educational Rights and Privacy Act of 1974; *20 U.S.C. 1232g.*) for the purpose of fostering better interagency information sharing between the schools and the juvenile justice system.

Increased access to student records for agencies with a legitimate interest in them will reduce inefficiency and improve decision making by all of the public officials involved in providing services to the student, his family and the community at large.

The individual student's right to privacy must be weighed against the mandate of schools to protect all students and staff from harm. The rights of all students and staff to attend safe school campuses and to live in crime-free communities must take precedence over the individual's wish to keep their school records secret from juvenile justice agencies.

The full text of FERPA, with the suggested additions indicated in italics and the suggested deletions bracketed, immediately follows the recommendations.

Recommendation 1

Delete subsection (a)(4)(B)(ii) regarding personnel of a law enforcement unit. Re-number following subsection "(iii)" to "(ii)" and "(iv)" to "(iii)."

Rationale:

This subsection will be unnecessary if the changes in Recommendation 3 occur.

Recommendation 2

Amend subsection (a)(5)(A) to read:

For the purposes of this section the term "directory information" relating to a student includes, but is not limited to, the following: the student's name, address, telephone listing, date and place of birth, class schedule, major field of study, grade average, participation in officially recognized activities and sports, physical description, photograph, degrees and awards received, attendance record, and the most recent previous and current educational agency or institution attended by the student.

Rationale:

The changes clarify that FERPA would allow the release of the student's current school attended, class schedule, attendance record, academic record as to

whether passing or failing, physical description and photograph without the consent of the student or parent. This information is very helpful to public agencies that are searching for the student or that are officially investigating the student. These additional categories of information would not be burdensome to school officials to provide or be unduly intrusive of the student's privacy.

Recommendation 3

Amend subsection (b)(1)(E) to read:

State and local officials or authorities who have a legitimate interest in the student's education record for official investigation or disposition of a case; this specifically includes investigations that may result in the student coming under the jurisdiction of the juvenile court.

Delete the final sentence in subsection (b)(1).

Rationale:

This is the most important amendment to FERPA for interagency partners. This change would allow schools to release all records to law enforcement, probation, welfare, protective services, prosecutors, mental health or other public agencies as long as they were conducting an official investigation of the student. The change does not expose the student or parent to full public disclosure. It only allows public officials with a need to know easier access to the student's educational records.

Text of FERPA Legislation

1232g. Family educational and privacy rights

Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution

shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than 45 days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations —

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate,

misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section, the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which —

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include —

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

[(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;]

(ii) [(iii)] in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iii) [(iv)] records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized

professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes, *but is not limited to,* the following: the student's name, address, telephone listing, date and place of birth, *class schedule,* major field of study, *grade average,* participation in officially recognized activities and sports, *physical description, photograph,* [weight and height of members of athletic teams, dates of attendance,] *degrees and awards received, attendance record,* and the most recent previous *and current* educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of the section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

Release of education records; parental consent requirement; exception; compliance with judicial orders and subpoenas; audit and evaluation of Federally supported education programs; record-keeping

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following —

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such

agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities *who have a legitimate interest in the student's education record for official investigation or disposition of a case; this specifically includes investigations which may result in the student coming under the jurisdiction of the juvenile court.* [to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;]

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26; and

(I) subject to regulations of the Secretary, in connection with an immediate, anticipated or probable emergency or danger, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

[Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.]

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless —

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: **Provided**, that except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are

responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

Surveys or data-gathering activities; regulations

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

Students' rather than parents' permission or consent

(d) For the purposes of this section, whenever a student has attained 18 years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

Informing parents or students of rights under this section

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are 18 years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

Enforcement; termination of assistance

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of the section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

Office and review board; creation; functions

(g) The Secretary shall establish or designate an office and review board

within the Department of Health, Education and Welfare for the purpose of investigating, processing, reviewing and adjudicating violations of the provisions of this section and complaints which maybe filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

Appendix D — Sample Forms

Consent to Release Confidential Information

(On Agency Letterhead)

I, *(child/parent's name)*, hereby give the *(agency name)*, my consent to obtain and exchange confidential medical, psychological, drug and alcohol treatment, mental health, other treatment and educational information with my/my child's physician, psychologist or counselor, social worker, probation officer and/or school officials. I understand that this information will be used by the juvenile court and the *(agency name)* to provide necessary services and treatment as long as I am/my child is under the jurisdiction of the juvenile court or under the supervision of *(agency name)*.

Minor's date of birth

Minor's Social Security number

Minor's current school or last school if not presently enrolled

Minor's counselor(s), psychologist or psychiatrist

Minor's social worker

Minor's probation/parole officer

Parent's/guardian's signature

Minor's signature

Date signed

Court Order Allowing Interagency Information Exchange

STATE OF _____, SUPERIOR COURT
COUNTY OF _____, JUVENILE COURT

ORDER OF THE JUVENILE COURT AUTHORIZING RELEASE AND EXCHANGE OF INFORMATION BETWEEN SCHOOL DISTRICTS, LAW ENFORCEMENT, PROSECUTORS, COUNTY COUNSELS, CHILD PROTECTIVE SERVICES AND PROBATION DEPARTMENT OF _____ COUNTY

Pursuant to the authority vested in the court by
_____ *(Code, Sections)* _____,
IT IS HEREBY ORDERED that juvenile court records and any other information that may be in the possession of school districts, law enforcement, prosecutors, county counsels, child protective services and probation departments regarding minors may be released, for governmental purposes only, to the following persons who have a legitimate and official interest in the information:

1. The minor
2. The minor's attorney
3. The minor's parents or guardians
4. Foster parents
5. All district attorneys offices
6. All law enforcement agencies
7. All county attorneys
8. All school districts
9. All probation departments
10. All public welfare agencies
11. All youth detention facilities
12. All corrections departments
13. Authorized court personnel
14. All courts
15. All treatment or placement programs that require the information for placement, treatment or rehabilitation of the minor
16. All multidisciplinary teams for abuse, neglect or delinquency
17. All juvenile justice citizens advisory boards
18. All state central information registries
19. All coroners
20. All victims may receive information from law enforcement, probation or the prosecutor to enable them to pursue civil remedies. These same agencies may release information to identifiable potential victims that a minor

constitutes as a threat to their person or property. They may release the name, description and whereabouts of the minor and the nature of the threat toward the potential victim.

All information received by authorized recipients listed above may be further disseminated only to other authorized recipients without further order of this court.

IT IS FURTHER ORDERED that the release of information to the media regarding minors shall be as follows:

1. District attorneys, probation and law enforcement officials may divulge whether or not an arrest has been made, the arresting offenses and disposition of the arrest.
2. District attorneys, county counsels, law enforcement, child protective services and probation officials may divulge whether or not they plan to file a petition and the charges alleged therein, the detention or release status of the minor, the date and location of hearings, the names of the judge or referee who will hear the matter, and the finding and disposition of the court.
3. In the event of runaways or escapes from juvenile placements or institutions, district attorneys, law enforcement, child protective services and probation officials may confirm the fact of the runaway or escape to the media and the name of the juvenile, the general type of record of the juvenile, and the city of residence of the juvenile.

IT IS FURTHER ORDERED that this order does not prohibit release of information by law enforcement, probation officials or district attorneys about crimes or the contents of arrest reports except insofar as they disclose the identity of the juvenile.

This order supersedes the previous order of this Court concerning release of information dated _____ .

_____ _____

DATE PRESIDING JUDGE OF JUVENILE COURT

Court Order Authorizing School-Probation Information Exchange

STATE OF _____, **SUPERIOR COURT**
COUNTY OF _____, **JUVENILE COURT**

ORDER OF THE JUVENILE COURT AUTHORIZING RELEASE AND EXCHANGE OF INFORMATION BETWEEN SCHOOL DISTRICTS AND PROBATION OFFICIALS

Pursuant to the authority vested in the Court by _____ Code, Section _____

IT IS HEREBY ORDERED that the Probation Department of _____ _____ County and all school districts in _____ County shall release information to each other regarding all minors and students under their supervision. Information that may be helpful in providing services, supervision, progress reports, advice to the juvenile court, and educational placements, as well as in increasing school safety and other legitimate official concerns of both agencies shall be shared by both agencies. Such information shall include, but is not limited to, academic, attendance and disciplinary records; arrest and dispositional data; names of minors on probation and their assigned probation officers; and names of minors attending individual schools and their assigned teacher, counselor or other appropriate adult contact at the school site.

_____ _____
DATE PRESIDING JUDGE, JUVENILE COURT

Notice of Juvenile Court Disposition

(On Agency Letterhead)

Superintendent,
_____ School District
_____
_____

Date: _____
RE: _____
Birthdate: _____
Last school: _____

In accordance with _____ *(Code, Section)* _____ and with the Order of the Juvenile Court, you are hereby notified that the above-named minor was found by the juvenile court to have:

☐ Used, possessed or sold a controlled substance

Committed:

☐ Murder
☐ Arson
☐ Robbery
☐ Rape or another serious sex offense
☐ Kidnapping
☐ Attempted murder or serious assault
☐ Use or possession of a deadly or dangerous weapon
☐ Another offense that may be significant to school safety, specifically:

_____
_____
_____

On _____, the minor was placed _____
_____

with specific terms of probation to _____
_____
_____
_____

Sincerely yours,

CONFIDENTIAL
INFORMATION

_____
Deputy Probation Officer

Phone: _____

Interagency Case Information Request

(On Agency Letterhead or Combined Names/Logos of All Participating Agencies)

Information requested by:

Name _____ Title _____

Mail to: _____ Phone _____

_____ Needed by *(date)*

Supervisor's name: _____ Phone _____

Minor/Student's name _____ Birthdate _____

Minor/Student's address _____

_____ Phone _____

School _____ Grade _____

Parent/Guardian's name _____

Parent/Guardian's address if different from Minor/Student's address

_____

_____ Phone _____

CONFIDENTIAL INFORMATION REQUESTED

SCHOOLS
- ☐ Attendance
- ☐ Discipline
- ☐ Academic achievement
- ☐ Current progress
- ☐ Special program placement
- ☐ Please call me

PROBATION
- ☐ Terms and conditions
- ☐ Current progress
- ☐ Arrest/disposition
- ☐ Please call me

DISTRICT ATTORNEY
- ☐ Petitions filed
- ☐ Progress case
- ☐ Court rulings
- ☐ Victim/witness information
- ☐ Please call me

LAW ENFORCEMENT
- ☐ Arrest history
- ☐ Diversions
- ☐ Field interviews
- ☐ Family arrest history
- ☐ Gang involvement
- ☐ Please call me

CHILD PROTECTIVE SERVICES
- ☐ Abuse/neglect data
- ☐ Current progress
- ☐ Service plans
- ☐ Please call me

INTERAGENCY TEAM
- ☐ Case conferences
- ☐ Profiles/reports
- ☐ Service plans
- ☐ Current progress
- ☐ Please call me

Letter to Form Information Management Committee

(Date)

(Salutation)

My reason for writing is to request that you or someone selected by you serve on an Information Management Committee. The organizational meeting of the committee will be on _____ *(date)* _____, beginning at _____ *(time)* _____. The meeting place will be at _____ *(location)* _____.

Many community agencies serve youth. Responding to the needs of our youth requires that we sometimes share records and other information. The Committee is being established to review the information needs of various youth-oriented agencies and thereafter develop appropriate information-management policies.

To familiarize you with the goals of the Committee, I am enclosing a copy of a book published by the National School Safety Center titled *THE NEED TO KNOW: Juvenile Record Sharing*. This should provide a start for the Committee's work.

Thank you for your consideration.

Very truly yours,

(Signature)

About the Authors

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NATIONAL SCHOOL SAFETY CENTER
A PARTNERSHIP OF PEPPERDINE UNIVERSITY AND THE
UNITED STATES DEPARTMENTS OF JUSTICE AND EDUCATION